

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1550

74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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NO. 74-1550

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THE UNITED STATES OF AMERICA,  
  
Plaintiff-Appellee,  
  
-against-  
  
CARMINE TRAMUNTI, et al.,  
  
Defendants-Appellants.

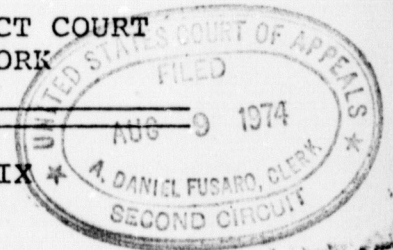
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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253 DEFENDANTS-APPELLANTS' JOINT APPENDIX \*  
Vol. T(28) - Pages 3599 to 3729

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UNITED STATES OF AMERICA  
vs.  
CARMINE TRAMUNTI, et al.

3599  
  
73 Cr. 1099  
  
New York, February 25, 1974;  
10.05 A.M.

Trial resumed.  
- -

(In the robing room.)

MR. PHILLIPS: Your Honor, the government would ask the Court to reconsider the introduction of the photographs from which the witness Pannirello selected Di Napoli's photograph as the individual that he was introduced to by Pugliese on Bronxdale Avenue. We submit this is admissible.

I think your Honor has already ruled that the fact of a prior out-of-court identification is admissible under the Second Circuit and D.C. cases. However, your Honor ruled the other day that the photographs themselves, that is, the ones that we took and made new ones so that the B numbers didn't show and there was no double exposure, so that there is now single exposure with no B numbers and there is no masking over and no tape or anything, your Honor ruled that they could not be introduced.

1  
2 The government submits that under both Harrington  
3 and De Sena, both Second Circuit cases decided the same  
4 day, December 28, 1973, that the photographs are clearly  
5 admissible. In both of those cases there was making  
6 overdone and there was double exposure and the Court of  
7 Appeals held that it was not error the way that it was  
8 done, although in Harrington they indicated that it was  
9 rather clumsily done.

10 Here a fortiorari there is no masking over,  
11 there is no double exposure, it's a straight on single  
12 exposure with no indication that anything has been taped over  
13 and therefore no B numbers, no linking of the defendant to  
14 any prior crime.

15 We submit that the jury should be entitled to  
16 look at the photographs from which Pannirello selected the  
17 defendant Di Napoli, particularly in view of Mr. Lopez's  
18 cross-examination of Pannirello as to his ability to pick  
19 out Di Napoli and particularly in view of Pannirello's  
20 inability on the first day of direct examination to pick out  
21 Di Napoli.

22 MR. LOPEZ: Your Honor, of course, I would object  
23 to this procedure.

24 I think that the jury has heard from Special  
25 Agent Nolan, who testified that Pannirello did from a group



of photographs, and I think he numbered them, pick out the photograph of Di Napoli.

I would object to the offer of that photograph as of little value as far as probative is concerned and extremely prejudicial, especially if it's submitted with a group of other photographs which appear to be a rogues' gallery, your Honor.

So I would object to that.

THE COURT: So you object to the submission of any of the photographs.

MR. LOPEZ: Any of the photographs.

THE COURT: All right. For the benefit of the Court of Appeals, the photograph here could be one of two things, either a mug shot or a passport photo.

Rather than have the jury speculate that it was a mug shot or a passport photo, as I can't believe that they would speculate that the defendant was about to visit the leprechauns in Ireland, I am going to let it in.

The case referred to by the government specifically says in certain circumstances. I don't feel that this is one of the circumstances.

MR. LOPEZ: Thank you, your Honor.

(In open court; jury not present.)

THE COURT: I don't want you to consider this



2 as a promise on my part, but it looks like we are getting  
3 to the end of the government's case. After the government's  
4 case I would assume that every lawyer would like to be  
5 heard on a motion to dismiss for failure of the government  
6 to prove its case. I will assume that all of you will  
7 make the motion. I will hear argument from four people.

8 I will hear argument from you, Mr. Panzer.  
9 Basically, I would guess your argument might be the filial  
10 love that Hattie Ware might have had for her niece and her  
11 niece's husband is not enough to tie her into the con-  
12 spiracy.

13 I will hear from Mr. Richman basically on the  
14 question of importation and knowledge of importation.

15 I will hear from you, Mr. Ellis, and I will hear  
16 from you, Mr. Siegal. Basically, I would assume -- I am  
17 not going to tell you what to argue -- basically, I would  
18 assume that you would be arguing that mere association is  
19 not enough.

20 As far as everybody else is concerned, I will  
21 assume that you will make the best possible argument, but  
22 I am not going to hear it.

23 If the government does finish today, we will  
24 start the defense tomorrow. We will go in the order of  
25 the indictment.

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2           There has been a substantial amount of argument,  
3 first, on the question of suppression of the million dollars  
4 and on the question of irrelevancy of the million dollars.  
5 I have already ruled on the suppression. I believe on  
6 the question of relevancy that the money is relevant and  
7 I am going to permit the government to have testimony in  
8 connection with the money.

9           I assume that every defendant objects to it.

10          MR. LOPEZ: Yes, your Honor.

11          THE COURT: And that objection applies to every-  
12 body. The objection is overruled right now.

13           I do not want the jury to get the impression  
14 that this is going in without objection. Therefore, Mr.  
15 Lopez, I am detaling to you to object to it on behalf of  
16 each and every defendant. All right?

17          MR. LOPEZ: Yes, your Honor. Your Honor, may I  
18 also move for its suppression to be preserve my rights  
19 under Rule 41(f).

20          THE COURT: Absolutely, yes.

21           I note certain attorneys are not present. May  
22 I ask who is covering for them.

23          Mr. Curley, are you covering for Mr. Dowd?

24          MR. CURLEY: Yes, your Honor. Mr. Warner was  
25 here earlier and he went to the library to check a cita-



1 hp

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2 tion. He asked me to cover for him until he returns. He  
3 is expected momentarily.

4 THE COURT: All right. Mr. Rosenberg, are you  
5 covering for Mr. Richman?

6 MR. ROSENBERG: Yes, your Honor.

7 THE COURT: Mr. Lopez, are you covering for Mr.  
8 Rosenbaum?

9 MR. LOPEZ: Yes, your Honor, I will cover for  
10 him.

11 THE COURT: Is everybody else here?

12 MRS. ROSNER: Mr. Sunden hasn't arrived, your  
13 Honor.

14 MR. FISHER: I will cover for him.

15 THE COURT: All right. I was just about to  
16 detail Mrs. Rosner to do it.

17 MR. ELLIS: May I approach the bench, your  
18 Honor?

19 THE COURT: Yes.

20 (At the bench; discussion off the record.)

21 (Jury present.)

22 THE COURT: Good morning.

23 Mr. Phillips, you want to call your next witness?

24 MR. PHILLIPS: The government calls George  
25 Reilly.

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2 G E O R G E F. R E I L L Y, called as a witness on  
3 behalf of the government, being first duly  
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. PHILLIPS:

7 Q Mr. Reilly, what is your occupation at the present  
8 time?

9 A I am a New York City Police Officer.

10 Q And what is your current assignment?

11 MR. LOPEZ: Objection, your Honor. It's  
12 immaterial, what is his current assignment.

13 THE COURT: Yes. I will sustain it.

14 Q Where are you working at the present time?

15 A I am on loan to the Federal Government.

16 MR. LOPEZ: Objection, your Honor.

17 THE COURT: All right. Let's get back --

18 MR. PHILLIPS: I don't think this is irrelevant  
19 at all, your Honor.

20 THE COURT: He is a New York City Police Officer.  
21 He is doing some work presently.

22 On a particular day where were you working, that  
23 is what we want to find out.

24 Q How long have you been a New York City Police  
25 Officer?

A About five and a half years.



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Q Where were you assigned in February, 1972?

3

A February of '72 I was assigned to the New

4

York Joint Task Force, Group 2.

5

Q What is the New York Joint Task Force?

6

A It's an organization that investigates

7

middle and upper echelon narcotics violators.

8

Q Is it made up of Federal agents as well as

9

members of the New York City Police Department?

10

A That's correct.

11

Q How long were you assigned to the New York

12

Joint Task Force?

13

A At that time, about six months.

14

Q Directing your attention to February 3, 1972,

15

were you on duty that evening?

16

A I was.

17

Q Did you have occasion to go to the Bronx?

18

A I did.

19

Q Did anybody accompany you?

20

A Yes, sir.

21

Q Who was that?

22

A Detective John Spurdis.

23

Q Was he also assigned to the New York Joint

24

Task Force at that time?

25

A He was.

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A He was.

Q Did there come a time that you went to Bronx-  
dale Avenue in the Bronx that evening?

A Yes, sir, about 8 o'clock.

Q Where on Bronxdale Avenue did you go?

A 1908 Bronxdale Avenue.

Q And what did you do after you arrived there?

A We surveilled the residence at 1908 Bronxdale  
Avenue.

Q Where did you take up your surveillance in re-  
lation to where 1908 Bronxdale Avenue was?

A About three or four houses south, on the same  
side of the street as 1908.

Q Directing your attention to approximately 8:45  
p.m., what, if anything, did you observe?

A About 8:45 I observed a small, green Pontiac  
pull up to 1908 Bronxdale Avenue. I observed a male  
get out with a suitcase.

Q I am sorry. I didn't hear that.

A I said I observed a male get out of the vehicle.  
He had a suitcase in his hand. He walked into  
1908 Bronxdale Avenue.

Q How was he carrying the suitcase?

A He was carrying it in his right hand at his



jha3 Reilly-direct

side.

Q Did he get out of the driver's side or the passenger's side?

A He got out of the passenger's side.

Q Was there somebody else driving the car?

A That's correct.

Q The individual that you saw carry the suitcase into the house, do you see him in the courtroom?

A Yes, sir.

Q Would you point out where he is sitting and what he is wearing?

A He is sitting over there next to Mr. Lopez and he is wearing a gray suit and a gray shirt.

MR. LOPEZ: Joseph DiNapoli, for the record.

THE COURT: All right.

Q What did the individual do who was driving the automobile?

A He made a U-turn for a parking spot on the other side of the street from 1908 Bronxdale.

Q Would you keep your voice up by speaking right into the microphone, please, Mr. Reilly.

What did you do? What did you observe then?

A Well, we made a U-turn right behind him. We waited for the individual who was driving that small

1 jha4 Reilly-direct

2 Pontiac to get out of the car.

3 Q Did he get out of the car? .....

4 A Yes, he did.

5 Q What did he do after he got out of the car?

6 A He started walking across the street towards  
7 1908 Bronxdale. At about this time we pulled up right  
8 next to his car. We looked out at him, he turned  
9 around and looked in at us. We recognized him as Vin-  
10 cent Papa.

11 Q What did he do then?

12 A He walked directly into 1908 Bronxdale Avenue.

13 Q Between that time and 9:30 did anybody enter  
14 or leave 1908 Bronxdale Avenue?

15 MR. LOPEZ: Objection, your Honor.

16 THE COURT: No, I will permit it.

17 MR. LOPEZ: Your Honor, I am sorry to do  
18 this and to interrupt. May I have a side bar?

19 THE COURT: Sure.

20 (At the side bar.)

21 MR. LOPEZ: Your Honor --

22 THE COURT: Let's make sure that the re-  
23 cord reflects that at the side-bar conference there is  
24 also Mr. Rosenberg, who is covering for Mr. Richman.

25 Mr. Lopez' problem I am sure is whether we



jha5 Reilly-direct

are going to get into the problem of Mr. Richman being at those premises on that night.

MR. PHILLIPS: I have no intention to. I just asked him this question. He is going to say that several individuals came and left the house and I am going to go right to 9:30.

MR. LOPEZ: Once he brings out that question then I intend to call Mr. Richman, because the obvious purpose of that question is to show some type of activity of people going in and out. That is the probative value. Once that is done, then I have to show who these people are to show that this wasn't a big conference or a big meeting of this kind.

We know why Mr. Richman was there, your Honor. We are not arguing at this moment probable cause. Your Honor has already denied that motion and he has preserved my rights as far as the trial suppression issue is concerned. So that would go to the issue of probable cause. I think that the issue here is very simple.

MR. PHILLIPS: I think it is relevant that people entered and left the house that evening before these two came out with the suitcase.

MR. LOPEZ: Relevant for what purpose, your Honor, if not to show some type of meeting and a lot

of activity? It might have a bearing on probable cause.

Now what we are trying to do, especially when the people went in and out, and we know who they are, and they are not defendants in this case or named as co-conspirators --

THE COURT: One of them is a lawyer.

MR. LOPEZ: One of them is an attorney.

THE COURT: Why don't you go straight to 9:30, when they came out. That is the best thing.

--MR. PHILLIPS: If your Honor is directing me, I will do it.

THE COURT: Yes.

(In open court.)

BY MR. PHILLIPS:

Q Officer Reilly, directing your attention to 9:30 that evening, were you still outside of 1908 Bronxdale Avenue?

A That's correct.

Q And in your automobile?

A Yes.

Q Was Detective Spurdis with you?

A He was.

Q What, if anything, did you observe at or



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Reilly-direct

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about that time?

A We observed Mr. Papa and the man who first went in with the suitcase, Joe DiNapoli, come out of 1908 Bronxdale Avenue.

Q Were either of them carrying the same suitcase?

A Well, they were carrying a suitcase when they came out. I can't say it was the same suitcase that went in.

Q Who was carrying the suitcase?

A Joseph DiNapoli.

Q Would you tell us how he was carrying it on this occasion?

A Yes. He was carrying it with two hands.

Q In front of him or beside him or where?

A In front of him.

Q What did you see him do, if anything, with the suitcase?

A We saw him and Mr. Papa approach the green Pontiac and place the suitcase in the rear of the car, behind the driver's seat.

Q Were they alone?

A Yes, they were.

Q Who put the suitcase in behind the driver's

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Reilly-direct

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seat?

A Joseph DiNapoli.

Q Did they enter the car, the green Pontiac?

A They did.

Q Who entered the driver's seat?

A Vincent Papa.

Q What did DiNapoli do?

A He went around the car and got in on the passenger's side.

Q What occurred after that?

A --They drove south on Bronxdale Avenue.



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Q What, if anything, did you do?

A Well, Special Agent Pallatrone and Reed followed them and we took up the surveillance behind Special Agent Pallatrone and Reed.

Q Was Special Agent Pallatrone your superior at that time?

A He was.

Q When had they arrived on the scene?

A About 8:50.

Q 8:50?

A --Right.

Q What happened after that, after you started to follow the automobile?

A We drove a couple of blocks, Special Agent Pallatrone told Spurdis --

MR. LOPEZ: Objection, your Honor, what Pallatrone told Spurdis.

THE COURT: Yes. Tell us what happened next.

Q Did you receive a message from Pallatrone over the radio?

A Yes.

Q What, if anything, did you do as a result of that message?

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Reilly-direct

3615

2 A We got directly behind the small, green  
3 Pontiac.

4 Q What did you do then?

5 A Well, a few blocks later we were told to  
6 take the car, which means pull the car over and place them

7 MR. LOPEZ: Objection.

8 THE COURT: All right. We don't want to  
9 know what you were told. You got another message.

10 Ladies and gentlemen, forget what he was  
11 told.

12 --You got another message. What did you do  
13 then?

14 MR. SIEGAL: May I interrupt for a second?

15 May I at this time ask your Honor to  
16 give a limiting instruction.

17 THE COURT: Yes.

18 Although I think this jury has heard the limit-  
19 ing instructions so many times you know it yourself,  
20 ladies and gentlemen, this evidence is being taken  
21 subject to connection. That is something I want you  
22 to consider when you start your deliberations. I don't  
23 want to spend a long, long time discussing what it  
24 means. Right now it is just being taken subject to  
25 connection.



2 All right, go ahead.

3 Q What happened after that?

4 A We pulled the car over.

5 Q What did you do then?

6 A We pulled our vehicle in front of the green  
7 Pontiac and I got out, and by this time Mr. Papa was walking  
8 towards me. He had gotten out of his car and walking  
9 toward me.

10 Q Where was Mr. DiNapoli?

11 A He stayed in the green Pontiac.

12 Q --Where was Pallatroni, do you recall?

13 A He pulled his car up behind the green Pon-  
14 tiac.

15 Q Did you place Papa under arrest?

16 A Yes.

17 Q Did anybody place DiNapoli under arrest?

18 A Special Agent Pallatroni.

19 Q Did you have occasion to see the suitcase  
20 that you had previously seen put into the car by  
21 DiNapoli?

22 A I did.

23 Q Where was it?

24 A It was on the sidewalk outside the green Pon-  
25 tiac. Detective Spurdis was looking into it.

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Reilly-direct

3617

2 Q Did you see the contents of it at that time?

3 A I did not.

4 Q Did you see the contents of it later on that  
5 evening?

6 A Yes, I did.

7 Q Where?

8 A At the office of the New York Joint Task  
9 Force.

10 Q Where is that located?

11 A 201 Varick Street, New York, New York.

12 Q --What were the contents that you observed on  
13 that occasion of the suitcase?

14 MR. LOPEZ: Objection, your Honor, on be-  
15 half of the defendant DiNapoli and all the defendants  
16 here.

17 THE COURT: I will permit it.

18 A It was bundles of \$100 and \$50 bills.

19 Q Was the money counted that evening?

20 A Yes, it was.

21 Q How much money was it?

22 MR. LOPEZ: Objection, your Honor. May  
23 I have a voir dire? I want to know if he counted the  
24 money. How could he give that information?

25 THE COURT: All right. Did you count the



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Reilly-direct

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money?

THE WITNESS:     Myself and nine others counted  
the money.

THE COURT:     You were there with others and  
you were all counting money, is that what you are saying?

THE WITNESS:     Yes.

THE COURT:     Okay, go ahead.

Q     And how much money was counted?

A     \$967,450.

Q     Was there any narcotics found in the car or in  
the suitcase?

A     No, sir.

Q     Did you have occasion to see a Vincent DiNapoli  
that evening?

A     I did.

MR. LOPEZ:     Objection, your Honor.

Q     Where and when did you see him?

MR. LOPEZ:     Objection, your Honor.     I  
move to strike this testimony as being irrelevant.

THE COURT:     I don't know where it is going.

MR. PHILLIPS:     I think it is relevant, your  
Honor, and I intend to show to the court why.

THE COURT:     Why don't you come up and tell  
me so that I don't get surprised.





(At the side bar.)

MR. PHILLIPS: Your Honor, Vincent DiNapoli was identified in the courtroom by Frank Stasi as the individual who was at the Tear Drops Bon-Soir with Tramunti and Stasi on the evening that Tramunti gave Stasi the message to go down and see Inglese and ask him whether or not he needed the money that they had previously talked about in Lo Piccolo.

When they went back to the house, Reilly and other officers, with a search warrant issued by Judge Gur that evening, they entered the house and Vincent DiNapoli was in the house that evening and he is the brother of Joseph DiNapoli.

We submit it is relevant, particularly in view of the government's contention that Tramunti was the money man behind the operation, Inglese's operation.

MR. SIEGAL: This money is a year before, isn't it? This money was seized in 1972, wasn't it?

He doesn't come in here, according to the bill of particulars, until January of 1973.

MR. PHILLIPS: It is relevant to show Tramunti's connection with DiNapoli and to show there was one conspiracy here as opposed to multiple conspiracies as is going to be contended, we are assured,

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Reilly-direct

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2 by the defendants.

3 MR. SIEGAL: The bill of particulars  
4 specifically says that Tramunti is alleged to have  
5 joined the conspiracy in January of 1973. He is talking  
6 about something that happened in February of 1972.

7 THE COURT: All right. My problem is much  
8 simpler than that.

9 Vincent DiNapoli that night, from what I gather,  
10 there is going to be testimony that Vincent DiNapoli was  
11 at his brother's house at the time they searched the  
12 house and in the search of the house they found no narcotics  
13 or any contraband, is that correct?

14 MR. PHILLIPS: Yes.

15 MR. SIEGAL: That's right.

16 THE COURT: I don't see what the necessity  
17 of saying his brother was there for. Under the cir-  
18 cumstances I am not going to permit it.

19 (In open court.)

20 BY MR. PHILLIPS:

21 Q Officer Reilly, did you have occasion to go  
22 back to 1908 Bronxdale Avenue later that evening?

23 A Yes, sir.

24 Q Approximately what time did you go there?

25 A I got back there about midnight?



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Reilly-direct

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Q Did you go inside?

A Not right then. About 1 o'clock we went in.

Q About 1 o'clock you went inside?

A Yes.

Q And did you go into the living room?

A I did.

Q Where is the living room in relation to the front door?

A As you go in the front door it is on your immediate left.

Q And did you go into the dining room?

A Yes, sir.

Q And how did you get into the dining room from the living room?

A To the best of my recollection, there was an entrance from the dining room to the living room.

Q Directly?

A Yes.

Q That is, you didn't have to go back into the hallway to go back into the dining room?

A I don't believe so, no, sir.

Q What did you observe in the dining room?

A There was a clothes closet, a walk-in clothes closet with men's suits hanging in there.

2 A About a hundred.

3 MR. PHILLIPS: Your Honor, may we approach  
4 the side bar for a minute?

5 THE COURT: Yes.

6 (At the side bar.)

7 MR. PHILLIPS: Your Honor, we submit that any  
8 evidence connecting co-conspirators, co-defendants, is  
9 admissible to show their knowledge of another, so we  
10 submit or would submit the fact that Vincent DiNapoli  
11 was in Joseph DiNapoli's house, there was testimony that  
12 he lived there for three years, the night --

13 THE COURT: What testimony? I haven't  
14 heard any testimony that he lived there three years.

15 MR. PHILLIPS: Joe DiNapoli's common-law  
16 wife.

17 THE COURT: I thought you meant Vincent  
18 DiNapoli lived there.

19 MR. PHILLIPS: No, Joe DiNapoli lived there.  
20 The fact that his brother, who did not live there, was  
21 there that night and was one year later with the defend-  
22 ant Carmine Tramunti is admissible to show the connection  
23 between Tramunti and DiNapoli, not trying to show that  
24 Vincent DiNapoli was any part of any conspiracy or  
25 anything, but it shows they knew each other, Tramunti and



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DiNapoli.

For example, the photograph of Hattie Ware and Butch Pugliese shows they knew each other. It is not incriminatory in any way. By the same token, we submit that the testimony connecting --

MR. LOPEZ: Your Honor, I am certainly going to object to this. I think it is the most logical thing in the world for a brother to go over to his brother's house if he is either missing or arrested.

That is certainly more indicative of his presence there than any relationship between them and Carmine Tramunti. Carmine Tramunti does not come into this thing on the government's own proof until about a year later, so I don't see the relationship.

You are again asking the jury to speculate on this fact.

MR. PHILLIPS: Prior relationships between the defendants is admissible --

MR. LOPEZ: There is no prior relationship here between Vincent DiNapoli. He is not a co-conspirator in this case. Now we are trying to show a relationship between Tramunti and DiNapoli through someone who is not even named as a defendant or co-conspirator in the case. It seems to be obviously

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2 unfair.

3 THE COURT: I made a ruling once. I am  
4 not going to change it.

5 (In open court.)

6 MR. PHILLIPS: May this be marked as a  
7 government's exhibit.

8 (Government's Exhibit 98 was marked for  
9 identification.)

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Q I show you what has been marked Government's Exhibit 98 for identification, Officer Reilly.

Can you identify this (handing)?

A I would have to open it. It should have my initials on the inside flap.

Q Would you check?

A Yes, this is the suitcase.

Q What is it?

A This is the suitcase the money was in. There is my initials and there is the date (indicating).

MR. PHILLIPS: The government offers Government's Exhibit 98 for identification.

MR. LOPEZ: Objection, your Honor.

THE COURT: Yes. I will permit it.

MR. FISHER: Objection on the grounds of relevance on behalf of the defendant --

THE COURT: I understand. I will admit it.

(Government's Exhibit 98 received in evidence.)

MR. PHILLIPS: The government has no further questions.

MR. LOPEZ: May I, your Honor?

THE COURT: Yes.

x x

1 tp2 \_\_\_\_\_ Reilly-cross

2 CROSS EXAMINATION

3 BY MR. LOPEZ:

4 Q Good morning, Officer Reilly. How are you?

5 A Good morning, Mr. Lopez.

6 Q Officer Reilly, you have discussed this case with  
7 Mr. Phillips, have you not?

8 A Yes, I have.

9 Q And on February 3, 1972, you were a patrolman,  
10 isn't that correct?

11 A That's correct.

12 Q And you were assigned to the Joint Task Force?

13 A That's correct.

14 Q And at the time your brother officer as John  
15 Spurdis working with you on February 3rd, isn't that right?

16 A That's right.

17 Q And he was a detective?

18 A That's right.

19 Q And is it your testimony that Spurdis seized the  
20 suitcase with the money?

21 A Yes, it is.

22 Q You didn't see him actually take the suitcase out  
23 of the car, did you?

24 A No, I didn't.

25 Q Spurdis was the one who opened the suitcase?



1 tp3 ----- Reilly-cross

2 A Yes.

3 Q Spurdis was the one who turned the suitcase over  
4 to Pallatroni?

5 A True.

6 Q Spurdis is the one who filed and signed the report  
7 in this case?

8 A Yes, he did.

9 Q You filed no reports in this case?

10 A I don't believe I did, no.

11 Q And Spurdis was the officer who signed the  
12 affidavit for the search warrant for 1908 Bronxdale Avenue?

13 A He did.

14 Q And Spurdis was the one who signed the complaint  
15 before the United States Magistrate and swore to it against  
16 Di Napoli and Papa on February 3, 1972?

17 A That's true, yes.

18 Q And Spurdis was the arresting officer?

19 A I guess he was, yes.

20 Q Correct: And Spurdis was the one who was with  
21 you when you claimed to have seen Vincent Papa and an un-  
22 identified person enter 1908 Bronxdale Avenue?

23 A Yes.

24 Q And Spurdis was the one who was also with you  
25 when Papa was arrested and Di Napoli was arrested on

1 tp4 ----- Reilly-cross

2 February 3, 1972?

3 A Yes.

4 Q And Spurdis was here in the courthouse when you  
5 spoke with Mr. Phillips in connection with this case?

6 MR. PHILLIPS: Objection, your Honor.

7 THE COURT: If he knows.

8 Q If you know.

9 A I don't know if Spurdis spoke to Mr. Phillips.  
10 I don't know.

11 Q You don't know if he spoke to Mr. Phillips?

12 A I don't know.

13 Q Did you see Spurdis in the courthouse at any  
14 time during these proceedings?

15 A Yes.

16 Q Was Mr. Phillips in the courthouse at the same  
17 time?

18 MR. PHILLIPS: Objection. I don't see what the  
19 relevancy of this line of questioning is.

20 THE COURT: I don't know what it is, either.

21 He saw Spurdis in the courthouse.

22 Q Did you see Mr. Phillips in the courthouse at  
23 the same time?

24 MR. PHILLIPS: Objection.

25 THE COURT: I don't know what it has to do with



tp5 ----

Reilly-cross

1  
2 it, Mr. Lopez.

3 MR. LOPEZ: Are you overruled or are you sus-  
4 taining it?

5 THE COURT: I am sustaining it.

6 MR. LOPEZ: Okay.

7 Q Have you seen Spurdis in the witness room there?

8 MR. PHILLIPS: Objection. I don't see the  
9 relevancy of this question at all, your Honor.

10 MR. LOPEZ: I think it is very relevant.

11 THE COURT: I will permit it.

12 A I didn't see him in the witness room, I saw him  
13 in the corridor.

14 Q Today?

15 A No, the last time we were here.

16 Q Did you see him today in the witness room?

17 A No, I have not.

18 Q Has Mr. Phillips advised you that he intends to  
19 call John Spurdis as a witness in this case?

20 MR. PHILLIPS: Objection.

21 Q If he has.

22 THE COURT: Sustained.

23 Q All right, now. Let's go back to 1908 Bronxdale  
24 Avenue around 8.45, just shortly before nine.

25 Officer, you were with John Spurdis at the time

1 tp6 Reilly-cross

2 I believe you told us, is that correct?

3 A Correct.

4 Q And you saw a person who you identified as Vincent  
5 Papa, is that correct?

6 A Yes.

7 Q And you saw another person who you could not  
8 identify, isn't that correct?

9 A That's correct.

10 Q In other words, the person that was with Vincent  
11 Papa going into the house you weren't able to identify or  
12 furnish a name for at the time?

13 A That's true, yes.

14 Q Right. Okay.

15 Now I show you Government's Exhibit 50, and ask  
16 you if you can identify this person. If you can.

17 A I can't.

18 Q That isn't Vincent Papa, is it?

19 A It resembles him, but I don't think it is him.

20 Q Okay, you don't think it is him.

21 Q Officer, at the time of this seizure, the auto-  
22 mobile was searched? At the time of the seizure of the  
23 green suitcase with the money, the automobile was searched?

24 A Yes.

25 Q And was any narcotics found in the automobile?



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Reilly-cross

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A No.

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Q Was Vincent Papa searched?

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A Yes, he was.

5

Q Was any narcotics found on Vincent Papa?

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A No.

7

Q Was Joseph Di Napoli searched?

8

A Yes.

9

Q And was any narcotics found on Joseph Di Napoli?

10

A No.

11

Q You went back to 1908 Bronxdale, isn't that

12

correct?

13

A That's correct.

14

Q And you went there with Peter Pallatroni?

15

A Yes.

16

Q And you went there with John Spurdis?

17

A Yes.

18

Q As a matter of fact, it was through John Spurdis's

19

affidavit that a warrant was obtained to enter the premises

20

at 1908 Bronxdale, isn't that correct?

21

A That's correct.

22

Q And Spurdis was also in the search of the apart-

23

ment, isn't that right?

24

A That's right.

25

Q And you found no narcotics there?

1  
2 A That's right.

3 Q You ripped up the walls? You took the walls  
4 apart, didn't you?

5 A A little bit down the cellar.

6 Q Yes. And you found nothing there whatsoever,  
7 is that correct?

8 A We found no narcotics.

9 Q No narcotics.

10 Going back, how many times have you been in  
11 1908 Bronxdale?

12 A Just once.

13 Q Are you telling this jury that on February 3, 1972,  
14 you could walk from the living room into the dining room?  
15 Is that what you are telling this jury?

16 A I am telling them to the best of my recollection,  
17 that's true, yes.

18 Q But are you sure about that?

19 A I'm not a hundred per cent, no.

20 Q Okay.

21 I show you Defendants' Exhibit E in evidence,  
22 and I ask you if you can recognize that photograph?

23 A No, I can't.

24 Q As a matter of fact, you don't know where this  
25 photograph was taken, do you?



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A No, I don't.

MR. LOPEZ: May I have the diagram, Mr. Phillips?

MR. PHILLIPS: Yes (handing).

Q I show you Government's Exhibit 78. This was a brick house, was it?

A Yes.

Q Was it a detached or semi-detached?

A No, it was connected to another house, I believe.

Q On both sides?

A No, there was nothing on the left of it as you were facing it but a driveway.

Q So it was semi-detached, is that correct?

A Correct.

Q You walk into the house through some steps and go through the front door?

A Yes, sir.

Q Immediately on the left is there the living room?

Yes.

Q Are there any stairs on the right to go upstairs?

A Yes.

Q As you walk in through that front door, what is the first thing you see straight ahead of you?

A It's a hallway. It's like a vestibule.

1 tp10 Reilly-cross

2 Q But can you see anything at the end of the  
3 vestibule?

4 A I believe the kitchen, yes.

5 Q I show you Defendants' Exhibit H for identifica-  
6 tion, and ask you if this is the view from the front door  
7 as you enter 1908 Bronxdale, if you remember?

8 A That looks like it, yes.

9 Q Right. There is a corridor and you can see the  
10 kitchen straight ahead, is that correct?

11 A Yes.

12 Q I show you Defendants' Exhibit G for identifi-  
13 cation and ask you if that is the view of 1908 Bronxdale  
14 as it appeared to you from the living room?

15 A I really don't recall that, no.

16 Q You don't remember that?

17 A No.

18 Q I show you Defendants' Exhibit F for identifi-  
19 cation, and ask you if that is another view of the corridor  
20 leading into the kitchen at 1908 Bronxdale Avenue?

21 A It appears to be, yes.

22 Q Have you seen this diagram, Government's Exhibit  
23 78, previously?

24 A I saw it on Mr. Phillips' desk.

25 Q Yes. Did you discuss it with him?



1           tpll                               Reilly-cross

2           A       Not that particular diagram, no.

3           Q       Did you discuss another similar diagram to  
4 Government's Exhibit 78?

5           A       Yes.

6           Q       You did?

7           A       Yes.

8           Q       And Mr. Phillips drew it for you, is that correct?

9           A       No, I drew it.

10          MR. LOPEZ:   May I have it, please?

11          MR. PHILLIPS:   Yes (handing).

12          May it be marked as an exhibit, your Honor?

13          MR. LOPEZ:   Yes, certainly, of course.

14          THE COURT:   Mark it as 99 for identification.

15          (Government's Exhibit 99 marked for

16 identification.)

17          MR. LOPEZ:   I will offer it into evidence, your  
18 Honor.

19          MR. PHILLIPS:   No objection, your Honor.

20          THE COURT:   Is there anybody over here that has  
21 an objection?

22          MR. FISHER:   Yes, your Honor, on the grounds of  
23 relevancy, the same objection with regard to this entire  
24 area.

25          THE COURT:   All right. I will permit it in.

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Reilly-cross

I will receive it in evidence.

MR. LOPEZ: Your Honor, may I show it to the jury so they have at least some idea of what I am talking about at this point?

THE COURT: As soon as it is marked in evidence.

MR. PHILLIPS: I don't believe the jury has seen 78 in evidence, so may that be shown at the same time?

THE COURT: Fine.

(Government's Exhibit 99 received in evidence.)

(Pause.)



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THECOURT: All right, Mr. Lopez. You may

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proceed.

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MR. LOPEZ: Thank you.

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BY MR. LOPEZ:

6

Q By the way, Officer Reilly, as far as Govern-  
ment's Exhibits 78 and 99 are concerned, when you discussed  
these exhibits or prepared Exhibit No. 99 -- that is your  
diagram of the 1908 Bronxdale Avenue -- was either Spurdis  
there or Pallatroni there?

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A No, sir.

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Q You were there alone with Mr. Phillips or whoever  
was with Mr. Phillips, is that correct?

14

A Yes, sir, that's correct.

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Q A few clarifications. Referring to your  
exhibit, Government's Exhibit 99, you have a line drawn  
between the living room and the dining room, isn't that  
correct?

19

A But other lines connotating the entrance.

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Q Right. These two little lines here, for the  
major portion of the wall, isn't that correct, is an entrance  
into the dining room, isn't that correct?

23

A That's my recollection.

24

Q That is your recollection?

25

A Yes.

1 hp2 Reilly-cross

2 Q You are as sure of that as you are of any other  
3 piece of testimony that you have given here in this court-  
4 room today?

5 A Absolutely.

6 Q By the way, you only recall one sofa, isn't that  
7 correct?

8 A That's correct.

9 Q You don't recall any sectional or two sofas in  
10 the dining room, is that correct?

11 A The living room. No, I don't.

12 Q In the living room. I am sorry. In the living  
13 room, isn't that correct?

14 A That's correct.

15 Q And you recall a coffee table there?

16 A Yes, sir.

17 Q You don't recall any television set?

18 A I do recall a television set being on, but I  
19 don't remember where it was in the living room.

20 Q Of course, you don't recall a zebra there?

21 A A zebra? No, I don't.

22 Q After the arrest and the seizure at around 9.30,  
23 9.35 p.m. that night, you left the scene, isn't that correct?

24 A Yes.

25 Q By the way, did you or Detective Spurdis ever



1 hp3 Reilly-cross

2 tell Agent Pallatroni that it was Vincent Papa that was  
3 carrying out the heavy suitcase out of 1908 Bronxdale?

4 A Yes. Detective Spurdis thought it was Vincent  
5 Papa who carried it out.

6 Q In other words, Detective Spurdis said it was  
7 Vincent Papa and you said it was the person that you later  
8 found out to be Joseph Di Napoli, is that correct?

9 A That's correct, yes.

10 Q I show you Government's Exhibit 3602 and I ask  
11 you if this refreshes your recollection, the first sentence  
12 here.

13 A He could have been informed by Detective Spurdis  
14 but not myself, because I didn't see that.

15 Q But Pallatroni does mention you, doesn't he?

16 A Yes, he does.

17 Q But that is not so, is that right? That is not  
18 a fact, is it?

19 MR. PHILLIPS: Objection.

20 Q That is not a fact, what Pallatroni says, is  
21 that correct?

22 A He is mistaken.

23 MR. PHILLIPS: Objection. I don't know what the  
24 question is referring to, but if it's referring to a docu-  
25 ment not in evidence the government objects to it.

1 hp4

Reilly-cross

2 MR. LOPEZ: We have the answer.

3 THE COURT: He answered. I will let it stand.

4 Q Actually you never saw Spurdis take the suitcase  
5 out of the car?

6 A I never saw him physically remove it from the  
7 back of the car, no.

8 Q As a matter of fact, the only time you saw this  
9 suitcase was when it was outside on the street, is that  
10 correct?

11 A That's true, yes.

12 Q And you said that there was something under,  
13 after the count, in which you participated, there was some-  
14 thing under a million dollars, isn't that correct?

15 A Yes.

16 Q How was this money tied together? Was it tied  
17 together in bundles?

18 A Yes.

19 Q Was it tied together by rubber bands?

20 A Yes.

21 Q Was it tied together by tapes?

22 A Rubber bands.

23 Q How about some paper around the money, showing  
24 numerations of the various quantities of money?

25 A No. We put those papers in ourselves when we



1 hp5 Reilly-cross

2 were counting them.

3 Q You counted under a million dollars, is that  
4 correct?

5 A That's correct.

6 Q Is the figure \$1,100,000 familiar to you?

7 A I read that story in the newspapers, if that's  
8 what you mean, yes.

9 Q I don't mean what you read in the newspapers.  
10 I mean is that figure familiar to you, has Mr. Phillips  
11 spoken to you about that figure, \$1,100,000?

12 A No, sir.

13 Q Has Mr. Borden of Internal Affairs of the Federal  
14 Drug Administration spoken to you about that figure?

15 MR. PHILLIPS: Objection.

16 THE COURT: Sustained.

17 Q Has Mr. Nadjari of the State Commission spoken to  
18 you about that figure?

19 MR. PHILLIPS: Objection.

20 THE COURT: Sustained.

21 Q After you saw this suitcase on the street what  
22 happened to it? Tell me.

23 A It was put in Special Agent Pallatroni's car.

24 Q In the trunk or in the rear seat?

25 A In the rear seat.

1 hp6 Reilly-cross

2 Q You saw that, right?

3 A That's my recollection, yes.

4 Q Did you ever hear Pallatroni said, "No, I never  
5 put it in the rear seat, I put it in the trunk of the car"?

6 A That's his recollection.

7 Q That is his recollection, but not yours?

8 A That's right.

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Q What happened to DiNapoli? Who did he go with to headquarters?

A He went with Detective Spurdis.

Q Alone?

A Yes.

Q And who did you go with?

A Vincent Papa and Special Agent Pallatroni.

Q You were seated in the rear with Vincent Papa?

A Yes.

Q The suitcase was between you or on the side?

A It was right behind the driver's head.

Q Right behind Pallatroni?

A Yes.

Q Now you are on your way to Police Headquarters, is that correct?

A No. We are on our way to 201 Varick Street.

Q 201 Varick Street, isn't that right?

A Yes.

Q It was pouring rain that night?

A Yes.

Q Did you see Pallatroni attempt to make any radio communication with headquarters?

A Did I see him --

Q Yes, while you were riding down to Varick

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Reilly-cross

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Street.

A Well, we put ourselves off the air because there was a prisoner in the car. You know, that's what we do.

Q Did you ever see Pallatroni make an attempt to communicate while you were riding in the car with Vincent Papa? Did you see him make an attempt while you were in the car?

A No.

Q Did you ever hear Pallatroni say, "I tried to call him up but I couldn't"?

A He did actually call him.

Q I mean while you were in the car with Vincent Papa.

A I don't believe so.

Q Now you are riding on the Cross Bronx Expressway, isn't that correct?

A Right.

Q And suddenly in the pouring rain and in the dark night you get off that exit, isn't that right?

A Third Avenue.

Q Third Avenue, isn't that right?

A That's right.

Q And you pull underneath the Expressway, is



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Reilly-cross

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that correct?

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A Yes.

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Q What does Pallatroni tell you to do?

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A He told me to take Mr. Papa out of the vehicle;

6

he wanted to use the radio.

7

Q He wanted to use the radio?

8

A Right.

9

Q So you got out of the vehicle with Vincent

10

Papa into the pouring rain?

11

A Right.

12

Q It was dark out underneath the Expressway?

13

A It was dark, yes.

14

Q And Pallatroni was left in the car?

15

A That's true.

16

Q Tell me, what was in the car when you got

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out?

18

A I don't follow you, what was in the car.

19

Q Let me show you. You mean you took this

20

out of the car?

21

A No, that stayed in the car.

22

Q So that leaves Pallatroni in the car, isn't

23

that right?

24

A That's right.

25

Q And then you go to headquarters and there is

under a million, isn't that correct?

A That's after Special Agent Pallatroni made his radio transmission. We got back in the car and went to 201 Varick Street, right.

Q There wasn't 1.1 million there, was there?

A No.

Q Just under a million, is that correct?

A That's correct.

Q By the way, the arrest of February 3, 1972, what happened to that complaint before the U. S. magistrate?

A I believe it was declined prosecution.

Q The government declined prosecution on that?

A I believe that's the case, yes.

Q All right. Thank you.

A You are welcome.

THE COURT: Does anybody else wish to inquire?

MR. PHILLIPS: Your Honor, I have a few questions on redirect, if I may.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q Officer Reilly, the complaint was dismissed, wasn't it?



1                   A       I believe they declined prosecution, Mr.  
2  
3       Phillips.        I really don't know.

4                   Q       Were you present when Detective Spurdis told  
5       Pallatroni that Papa was carrying the suitcase?

6                   A       No. I had discussed it with Detective Spurdisi.  
7       He had said that he thought it was Papa, and I said no,  
8       it was DiNapoli.

9                   Q       Do you recall specifically being in the dining  
10       room and looking into the living room when you went back  
11       to 1908 Bronxdale Avenue?

12                  A       That's my recollection, yes.

13                  Q       How do you recall that?

14                  A       There were three males sitting on the  
15       sofa and we were trying to keep our eye on them while  
16       we were searching the house, and it seems that you  
17       could see them sitting on the sofa while you were in  
18       the dining room.

19                  Q       The sofa was in the living room?

20                  A       Yes, sir.

21                  Q       Who were the three males?

22                  THE COURT:    I don't think we have to get  
23       into that.

24                  MR. PHILLIPS:   I don't think there has been  
25       an objection.

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Reilly-cross

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MR. LOPEZ: Now you hear it. Objection.

THE COURT: All right. Is that it?

Anybody else wish to inquire?

All right, step down.

(Witness excused.)

THE COURT: All right, ladies and gentlemen.

Time for your morning break.

Marshal, will you escort the jury out.

(The jury left the courtroom.)

THE COURT: All right. Take 10.

(Recess.)



2

(In open court; jury present.)

3

THE COURT: All right. Call your next

4

witness.

5

MR. PHILLIPS: The government calls Peter

6

Pallatroni.

7

P E T E R P A L L A T R O N I, called as a

8

witness by the government, being first duly sworn,

9

testified as follows:

10

DIRECT EXAMINATION

11

BY MR. PHILLIPS:

12

Q Mr. Pallatroni, what is your present occupa-

13

tion?

14

A I'm a specialist --

15

MR. LOPEZ: Objection, your Honor.

16

THE COURT: No, I will permit it.

17

What do you do for a living?

18

THE WITNESS: I'm a special agent with the

19

Drug Enforcement Administration.

20

Q And what assignment do you have there?

21

A Currently I'm a group supervisor at 555 West

22

57th Street.

23

Q And that is the regional offices for New York?

24

A Yes, sir, it is.

25

Q How long have you been a group supervisor?

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A        Since February of 1970.

Q        And how long have you been a special agent with  
the Drug Enforcement Administration?

A        Since May of 1966.

Q        What was your assignment in February of  
1972?

A        I was a group supervisor with the New York  
Joint Task Force.

Q        And how many people were in your group?

A        Approximately 10 or 11, sir.

Q        Were you on duty on the evening of February 3,  
1972?

A        Yes, sir, I was.

Q        And on that evening did you have occasion to  
go to the vicinity of 1908 Bronxdale Avenue?

A        Yes, sir, I did.

Q        Did anybody accompany you?

A        I was in the company of Special Agent James  
Reed.

Q        And what time did you arrive there?

A        Shortly after 8:45 p.m.

Q        What did you observe when you arrived?

A        Well, when I arrived I immediately observed  
another one of our cars there with Patrolman Reilly and



2 Detective Spurdis. At that time I had a conversation  
3 with Detective Spurdis.

4 At approximately -- well, shortly before 9  
5 o'clock I observed three women --

6 THE COURT: Hold on. Let us not get into  
7 that.

8 Q Did you have occasion to see any other  
9 automobiles parked in the vicinity of 1908 Bronxdale Avenue

10 A Yes, sir. There were several automobiles  
11 there.

12 Q Was there, specifically, a green Pontiac?

13 A Yes, there was.

14 Q And where was that parked?

15 A That was parked on Bronxdale Avenue on the  
16 opposite side of the street that the house was on.

17 Q Directing your attention to 9:30 that evening  
18 where were you then?

19 A At approximately 9:30 p.m. we were in the  
20 vicinity of East Tremont Avenue at Castle Hill Avenue  
21 in the Bronx.

22 Q How far from 1908 Bronxdale Avenue is that?

23 A I would estimate approximately seven city  
24 blocks?

25 Q Were you still with Agent Reed?

1 A Yes, sir, I was.

2 Q Did you have occasion to receive a radio call  
3 from Patrolman Reilly?

4 A Yes, sir, I did.

5 Q And as a result of that radio call, what, if  
6 anything, did you do?

7 A At that time I followed the 1968 Pontiac from  
8 Bronxdale Avenue to East Tremont Avenue and Castle Hill  
9 Avenue  
10 Avenue

11 Q Was this the same automobile you had seen  
12 parked across from 1908 Bronxdale Avenue?

13 A Yes, sir, it was.

14 Q Did you observe anybody in that automobile?

15 A Yes, sir. There were two occupants in the  
16 automobile.

17 Q Did you recognize them at that time?

18 A I recognized one of the occupants, sir.

19 Q Who was that?

20 A Vincent Papa.

21 Q Was he driving or was he the passenger?

22 A He was the driver.

23 Q What occurred after you started to follow the  
24 automobile?

25 A Well, once we got to, as I said, East Tremont



and Castle Hill, I ordered that the automobile be stopped and the occupants placed under arrest.

Q To whom did you give that order?

A Patrolman Reilly and Detective Spurdis.

Q What happened after that?

A As soon as the automobile was stopped, I observed Vincent Papa exit the driver's side of the car and walk towards the first government car, which was occupied by Patrolman Reilly and Detective Spurdis.

Q What did you do?

A I shouted instructions to Detective Spurdis and went around to the passenger's side of the car and arrested Joseph DiNapoli.

Q Do you see Mr. DiNapoli in the courtroom today?

A Yes, sir. He is sitting directly behind Mr. Lopez.

MR. LOPEZ: We stipulated he identified Mr. DiNapoli.

Q What did you do after you arrested Mr. DiNapoli?

A I had Mr. DiNapoli over a retaining wall of St. Raymond's Church. I turned around and saw the green suitcase on the sidewalk with Detective Spurdis looking into it. I went to the suitcase and observed it was full of money. I then took custody of the

suitcase.

Q Where did you take the suitcase?

A To the office of the New York Joint Task Force, 201 Varick Street.

Q I show you what has been marked as Government's Exhibit 98 in evidence.

Can you identify that?

A Yes, sir, I can. This is the suitcase we seized on the evening of February 3rd. My initials appear on the inside.

Q That is the suitcase you just made reference to with money in it?

A Yes, sir.

Q Did you, in the company of anybody else, attempt to count the money?

A Yes, sir. There were a number of us who counted the money.

Q And how much money was accounted for?

A The final count was \$967,450.-

Q Do you recall the denominations, to the best of my recollection, there was \$679,800 in \$100 bills, \$267,750 in \$50 bills, and approximately \$17,880 in mixed \$10 and \$20 bills.

Q Has that money been turned over to the Internal



Revenue Service?

MR. LOPEZ: Objection, your Honor. If it can be produced in court, we would like to see it and have it passed around.

THE COURT: It is not going to be produced in court. I am responsible for the exhibits here and I am not going to be responsible for that.

All right, it is not in court. That is the most important thing. It is not in court because I don't want it in court.

BY MR. PHILLIPS:

Q I show you, Agent Pallatroni, what has been marked Government's Exhibits 100 through 100M. Tell us if you can identify those photographs.

(Government's Exhibits 100 and 100A through 100M were marked for identification.)

xx A Yes, sir. These were photographs we took during the morning hours of February 4th when we were counting the money.

Q And do they depict the money, some or all of these photographs?

A Yes, they do, sir.

MR. PHILLIPS: The government offers Government's Exhibits 100, 100A through M for identification.

2 MR. LOPEZ: Your Honor, may we approach the  
3 side bar on these photographs, please?

4 THE COURT: Yes.

5 (At the side bar.)

6 MR. LOPEZ: Your Honor, two objections.

7 I think that the photographs have no proba-  
8 tive value whatsoever, except to prejudice the jury and  
9 show the intensity of the money. That is the only  
10 thing that Mr. Phillips is offering it.

11 THE COURT: What do you mean, the intensity  
12 of the money?

13 MR. LOPEZ: How much money it was and how  
14 it is spread out on the table, and it shows the agents  
15 counting the money and a group of them all around the  
16 money.

17 I think the fact has already been shown to  
18 this jury that under a million dollars was seized on  
19 February 3, 1972 in a car occupied by DiNapoli. I think  
20 that the photographs don't add to that, except that they  
21 prejudice the situation, men counting money all around  
22 the table spread out. It is extremely prejudicial.

23 MR. PHILLIPS: I think it is less prejū-  
24 dicial than the photograph of Hattie Ware and Butch  
25 Pugliese.



MR. LOPEZ: We objected to that too.

MR. PHILLIPS: It is certainly less prejudicial than the money itself.

MR. LOPEZ: I think it is prejudicial. The probative value here is --

MR. PHILLIPS: Nor do I think it is any more prejudicial than the testimony itself.

MR. LOPEZ: Testimony can be probative and prejudicial, that is true, but why do we need the photographs now?

THE COURT: Unfortunately, the photographs show, I gather, agents and police counting the money and standing around the money.

The expression on the face of the agents and police are shown clearly in each of the photographs, except one. In this photograph, 100F, there is a person standing behind the money, and because of some photographic failure there is an almost complete wipeout of the man's head.

I will let 100F go in, not the rest of them.

(In open court.)

THE COURT: Exhibit 100F is received in evidence.

(Government's Exhibit 100F was received in

evidence.)

BY MR. PHILLIPS:

Q Agent Pallatroni, I show you Government's Exhibit 50 in evidence. Do you recognize the individual in that photograph?

A No, sir, I can't recognize this photograph.

MR. PHILLIPS: Your Honor, I have no further questions.

I would just like to pass Government's Exhibit 100F to the jury.

THE COURT: All right.

CROSS EXAMINATION

BY MR. LOPEZ:

Q Agent Pallatroni, on February 3, 1972 you were not present when the two individuals, one of them Papa and the other one an unidentified male, entered 1908 Bronxdale, is that correct?

A That's correct, sir.

Q You didn't see this, did you?

A No, sir, I did not.

Q Your information is that Spurdie saw this, isn't that right?

A My information is, sir, that Detective Spurdie and Patrolman Reilly saw this.



1 gta

Pallatron-cross

3659

2 Q Right.

3 And you didn't see either of the individuals,  
4 Papa and the unidentified male, who later was identified  
5 as DiNapoli, exit 1908 Bronxdale with the green  
6 suitcase, is that correct?

7 A That's correct, Mr. Lopez.  
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Pallatroni-cross

3660

Q Detective Spurdis and Reilly were there, isn't that right?

A That's correct, sir.

Q That's right.

You didn't see when Detective Spurdis took the suitcase out of the back of the car driven by Papa and occupied by Di Napoli, did you?

A No, sir, I did not.

Q As a matter of fact, you weren't even present when the suitcase was originally placed into the Papa-Di Napoli vehicle by one of those individuals, is that right?

A I wasn't -- I was present, but not in a position to see it go in, sir.

Q Right. In other words, you didn't see the actual thing going into the car, isn't that correct?

A That's correct, sir.

Q In this case Spurdis was the arresting officer?

A Detective Spurdis and Patrolman Reilly, myself and Agent Reid.

Q But it was Detective Spurdis who signed the complaint before the United States Magistrate?

A That's correct, sir.

Q It was Detective Spurdis who signed the affidavit for the search warrant for 1908 Bronxdale?



1 tp2

Pallatroni-cross

2 A To the best of my knowledge, yes, sir.

3 Q And was Detective Spurdis the one who prepared  
4 the reports on these matters?

5 A That's correct, sir.

6 Q So he was carrying the case, is that not correct?

7 A That portion of the case, yes, sir.

8 Q As far as the events of February 3, 1972, isn't  
9 that correct?

10 A Yes, sir, I would have to say that is correct.

11 Q Right. As a matter of fact, didn't he get some  
12 sort of citation for the arrest of February 3, 1972?

13 MR. PHILLIPS: Objection, your Honor.

14 MR. LOPEZ: All right, I will withdraw the  
15 question.

16 Q When you arrived on the scene at 9.30 p.m., this  
17 was in front of St. Raymond's Church, is that correct?  
18 When the Papa-Di Napoli car -- this was in front of a church  
19 where the car was stopped or nearby?

20 A When we stopped the vehicle it was in the vicinity  
21 of St. Raymond's Church.

22 Q Right. And you undertook to take Di Napoli out  
23 of the car, is that not correct?

24 A That is correct, Mr. Lopez.

25 Q And you searched Di Napoli?

tp3

Pallatroni-cross

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2

A I believe I did, sir.

3

Q Right.

4

You didn't find any drugs on Di Napoli?

5

A No, sir, I did not.

6

Q You didn't find any drugs in the car?

7

A No, sir, I did not.

8

Q You didn't find any drugs on Vincent Papa?

9

A No, sir, I did not.

10

Q And did you assist in the search of 1908 Bronxdale?

11

A Yes, sir, I did.

12

Q And you didn't find any drugs in that house, did

13

you?

14

A No, sir, we did not.

15

Q And as a matter of fact, you even tore out some

16

walls looking for contraband or anything of the sort, isn't

17

that correct?

18

A We didn't find any drugs in the house.

19

MR. LOPEZ: Mr. Phillips, may I have the diagrams,

20

please?

21

MR. PHILLIPS: Yes (handing).

22

Q Do you recall the inside of 1908 Bronxdale, if

23

you do?

24

A To some degree, sir.

25

Q And were you shown a diagram of the inside of



tp4

Pallatrone-cross

1908 Bronxdale Avenue by Mr. Phillips or anyone on his staff?

A No, sir, I was not.

Q And do you recall, if you recall, from the living room standing inside the living room you could see the dining room? If you recall now.

A To the best of my knowledge, yes, sir, I believe you could.

Q Right. How many sofas, if any, were in the living room?

A Well, I couldn't be sure of this, but to the best of my recollection I believe it was what I would call a sectional-type sofa.

Q I show you Government's Exhibit 99 --

MR. PHILLIPS: I don't think the witness had completed his answer, your Honor.

MR. LOPEZ: I am sorry.

MR. PHILLIPS: I think he should be permitted to.

THE COURT: Go ahead.

A I believe there was a sectional-type sofa which the back of the sofa would have been facing the front window of the house and I believe it came around to at least part of the far wall and I believe there was a mirror on that wall.

tp5

Pallatroni-cross

Q I see. Sir, I show you Government's Exhibit 99 and ask you to look at the area which depicts the living room.

Do you see it?

A Here is the entrance, sir? This is the living room. This would be the far wall.

This would be the entrance, there is a door going in here or an entranceway. I don't remember if the coffee table was there, but there was definitely a couch on that wall --

Q Was there any other couch there?

A There is a possibility, and I'm not sure of this, that there could have been another section that came into this area, but I'm not sure of that (indicating).

Q You are not sure --

MR. PHILLIPS: May the witness indicate on the diagram the area he is referring to that couch could have gone on?

THE COURT: Yes.

MR. LOPEZ: Let us use a red pencil or a green one, which matches the suitcase.

A There is a possibility, and, as I say, I'm not sure, that there was -- this was a sectional that came around this way, but I'm not sure.



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Q But that part you are not sure, is that correct?

A That's correct, sir.

Q But you do remember one sofa here, is that correct?

A Yes, sir.

Q You don't remember if there was a coffee table there?

A No, sir, I don't.

Q Between the living room and the dining room -- do you see which is the dining room here, first of all?

A This would be the dining room (indicating).

Q Between the living room and the dining room, are you telling us that there was an open wall here?

A Definitely not, Mr. Lopez.

Q This part was solid (indicating).

Q Show us in green which part was solid.

A To the best of my recollection --

Q Yes, that's all we want.

A There is a possibility and I can't really swear to it that there was an entrance here, but, as I said, I'm not sure. But most of this wall was solid (indicating).

Q So if this portion of the wall was solid, if you sat on the sofa here or in the center of the living room, you really couldn't see into the dining room, could you, from that point?

1 tp7 Pallatroni-cross

2 A Well, there would be some part of the room that  
3 you couldn't see into the dining room, but if you were  
4 sitting in certain areas you could see in through the  
5 entranceway, yes, sir.

6 Q You put in the wall, which is parallel to the  
7 end of the sofa, is that correct, approximately?

8 A I really don't know, sir.

9 Q You don't know?

10 A As I say, I believe that there was an entrance  
11 there. Most of that far wall was solid. It was a closet which  
12 opened on the dining room side. That much I recall.

13 Q You do know and it was a solid wall there, is that  
14 correct?

15 A I didn't say that.

16 MR. PHILLIPS: Objection.

17 Q There was a solid wall in the living room up until  
18 the closet, isn't that correct?

19 A No, no.

20 Q Where you marked green, would you put the green  
21 again? I want to make sure of this.

22 A I believe there was an entrance here. Now, this  
23 would be the wall (indicating).

24 Q Fine.

25 A Now, this was a hollow wall. The entire wall,



1 tp8 Pallatroni-cross

2 how far it went, was made into a clothing closet with the  
3 doors on the dining room side of that wall.

4 Q Right. There was no doors on the living room  
5 side, were there?

6 A Not that I recall, no, sir. There was an  
7 entranceway here, to the best of my recollection.

8 Q Okay. So at least for this portion which you  
9 have marked green on Government's Exhibit 99, if you were  
10 in the living room you couldn't see into the dining room,  
11 isn't that right?

12 A Not if you were looking directly at the wall,  
13 but if you were looking through the opening you could see  
14 a portion of the dining room.

15 Q Right. And you would have to be standing closest  
16 to the entrance door, isn't that correct? Looking at the  
17 diagram --

18 A You could be sitting over here and seeing in  
19 here (indicating).

20 Q You could see what, the corner of the dining  
21 room?

22 A You could see a portion of the dining room.

23 Q You couldn't see the dining room table, could  
24 you?

25 A I don't know. I don't recall.

tp9

Pallatroni-cross

Q But, in any event, you searched 1908 Bronxdale, is that correct? You searched 1908 Bronxdale?

A Yes, sir, we did.

Q Detective Spurdis signed the affidavit for that, isn't that right?

A That's correct, sir.

Q And you didn't find any drugs, any contraband in that house, is that right?

A That is correct, sir.

Q Okay.

You told us that you did not see when Detective Spurdis took the green valise out of the car, is that right?

A That's correct, sir.

Q You saw it when Spurdis was opening it up on the sidewalk, isn't that correct?

A I saw it when it was opened on the sidewalk.

Q Did Detective Spurdis give you the valise?

A I believe I took custody of the valise, sir.

Q You don't remember that for sure?

A Well, I took custody of the valise.

Q And you put it into the trunk of the car, isn't that correct?

A The car that I was going to drive to the office, yes, sir.



1 tp10

Pallatroni-cross

2 Q In other words, this valise was not on the rear  
3 seat? I just want to make sure of that. This valise,  
4 you didn't put it inside of your car on the rear seat,  
5 your recollection is that you put it in the trunk of the  
6 car?

7 A That's correct, sir.

8 Q Right.

9 Isn't it a fact that Agent Reilly communicated  
10 with you and told you that he seen Vincent Papa carrying  
11 the suitcase?

12 A Yes, sir, that's correct.

13 Q On the way to Varick Street or headquarters or  
14 your offices there, did there come a time when you stopped  
15 the vehicle?

16 A Yes, sir, there did.

17 Q Had you attempted previously to that to make any  
18 radio communication with headquarters?

19 A I had made some radio communications with head-  
20 quarters. I was attempting to notify units in the field.

21 Q You had attempted, isn't that correct?

22 A That's correct, sir.

23 Q And this was while you were driving, is that  
24 correct?

25 A Yes, sir, that is.

1 tp11

Pallatroni-cross

2 Q And that was the time when Vincent Papa and  
3 George Reilly were in the back seat of the car?

4 A That's correct, sir.

5 Q Then you got off the Bronx Expressway, isn't  
6 that correct?

7 A I exited the Cross Bronx Expressway, yes, sir.

8 Q And you went underneath the Expressway, isn't  
9 that correct?

10 A Well, I went parallel to the Expressway.

11 Q And when you pulled off, you stopped the vehicle  
12 some place, didn't you?

13 A I pulled the car off the Cross Bronx Expressway  
14 at the Third Avenue exit and I stopped immediately.



Q Then you went to the trunk of the car and you took up the suitcase wherever you took it?

1 hp2 Pallatroni-cross

2 A No, sir. We all went up together, George Reilly,  
3 Vincent Papa, myself, and the suitcase.

4 Q And then you turned it over and the count of the  
5 money started some time later, isn't that correct?

6 A At that time I took a rough count of the money  
7 with other officers.

8 Q Did you ever tell Reilly that there was a  
9 quarter of a million dollars there?

10 A When I first looked at the suitcase in the street --

11 Q Did you ever tell him that?

12 A -- I made the statement that "I think there is  
13 at least a quarter of a million dollars in there."

14 Q One last question. Were you aware of the fact  
15 that Joseph Di Napoli was involved in substantial shylocking  
16 activities?

17 MR. PHILLIPS: Objection. It's assuming a fact,  
18 your Honor, that is not in evidence.

19 MR. LOPEZ: I am asking him.

20 THE COURT: No, I will permit it.

21 Go ahead, answer the question.

22 A Yes, sir, I was.

23 Q You were aware that he was involved in a rather  
24 lucrative loan sharking or shylocking operation, isn't that  
25 correct?



1 hp3

Pallatroni-cross

2 MR. PHILLIPS: Objection.

3 THE COURT: That is the same question.

4 Q Was it lucrative?

5 MR. PHILLIPS: Objection.

6 MR. LOPEZ: I want to know the extent, if he  
7 knows.

8 THE COURT: How would he know?

9 MR. LOPEZ: Let me refresh his recollection  
10 then.

11 Q I refer you to page 157 of the trial record.

12 MR. PHILLIPS: I object to this.

13 THE COURT: To what?

14 MR. PHILLIPS: I object to this line of question-  
15 ing.

16 THE COURT: Let me see that.

17 MR. LOPEZ: I will rephrase the question, your  
18 Honor.

19 Q Were you aware that he was in an extensive loan  
20 sharking business? Yes or no.

21 MR. PHILLIPS: Objection.

22 THE COURT: No, I will permit it.

23 Go ahead, answer.

24 A Yes, sir.

25 MR. LOPEZ: No further questions. Thank you





1 hp4 Pallatroni-redirect

2 very much.

3 THE COURT: All right.

4 MR. PHILLIPS: May I proceed, your Honor?

5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q In your experience, Agent Pallatroni, are people  
9 in the loan sharking business also involved in the narcotics  
10 business?

11 MR. LOPEZ: Objection, your Honor.

12 THE COURT: Sustained.

13 Q Agent Pallatroni, to your knowledge, is the loan  
14 sharking business the business of lending out money at high  
15 usurious interest rates?

16 A Yes, sir, it is.

17 Q How long was it, Agent Pallatroni, between the  
18 time that the car being driven by Vincent Papa in which Di  
19 Napolo was riding was stopped and the time you saw the suit  
20 case on the sidewalk?

21 A It had to be a matter of, from the time that it  
22 was stopped, maybe ten or fifteen seconds.

23 Q You mentioned a closet that was in the dining  
24 room, is that correct?

25 A Yes.

hp5

Pallatroni-redirect

Q Do you recall what was in that closet?

A Yes, sir, I do. There was all sorts of men's clothing, mostly suits, sports jackets and trousers.

Q How many suits were there?

MR. LOPEZ: Objection, your Honor.

THE COURT: Sustained.

Q When you went back to the house that evening do you recall who was present in 1908 Bronxdale Avenue?

MR. LOPEZ: Objection, your Honor.

THE COURT: Sustain that one, too.

Does anybody else wish to inquire?

MR. PHILLIPS: I have no further questions, your Honor.

MR. LOPEZ: Your Honor, for completeness, may I just offer into evidence Defendants' Exhibit H, Defendants' Exhibit G, Defendants' Exhibit F, those exhibits.

THE COURT: Do you object to those exhibits?

MR. PHILLIPS: We do, your Honor, yes. But I think the witness can be excused, because I don't think anybody has any further questions of the witness.

THE COURT: I am not so sure about that. I want to see the exhibits.

(At the side bar.)

MR. PHILLIPS: The government objects on the



1 hp6 Pallatroni

2 ground that no proper foundation has been laid. They haven'  
3 been shown to Agent Pallatroni. They had been shown to  
4 Agent Reilly and he was unsure of what they depicted.

5 MR. LOPEZ: All right. I will withdraw the offer  
6 at this time.

7 THE COURT: All right.

8 (In open court.)

9 THE COURT: All right, Agent. Step down.

10 (Witness excused.)

11 MR. PHILLIPS: Your Honor, before the government  
12 rests, there are two stipulations that we have, one which is  
13 written, which I would like to read, and another which is  
14 oral, which is very simple.

15 THE COURT: All right.

16 MR. PHILLIPS: It is hereby stipulated and agreed  
17 by and between the government and defense counsel that if  
18 the appropriate witnesses were called they would testify as  
19 follows:

20 On January 19, 1973, defendant Louis Inglese  
21 commenced serving a sentence of four months for drunken  
22 driving; that he served this sentence at both Rikers Island  
23 and the Manhattan House of Detention, 100 Centre Street;  
24 that after serving this sentence he was released from  
25 prison on April 26, 1973.

1 hp7

2 MRS. ROSNER: It is so stipulated, your Honor.

3 THE COURT: All right.

4 MR. PHILLIPS: The other stipulation, your  
5 Honor, that the sample of white powder which Officer Frank  
6 Connally testified he received from Frank Stasi in the  
7 apartment at 1651 Williamsbridge Road on May 29, 1973,  
8 was analyzed by the chemist and found to contain cocaine.

9 Your Honor, the government would formally rest  
10 at this time, but Mr. Curran has asked that we check certain  
11 exhibits, as to whether they are in evidence or not. So  
12 may we have just a minute?

13 THE COURT: Sure. I will tell you what I will  
14 do. I will give you the lunch period to check. As I  
15 recall, it's up to 98,99.

16 MR. PHILLIPS: We are at 100, but there are  
17 certain exhibits before this that we would like to look at.

18 THE COURT: Sure. Ladies and gentlemen, you  
19 are going to lunch. I am going to give you a surprise  
20 too. Just to prove to you that I am not Simon Legree,  
21 I am going to let you off this afternoon. So after lunch  
22 you are going back.

23 (Jury left the courtroom.)

24 THE COURT: As to the rest of you, I am Simon  
25 Legree. I indicated this morning that I would hear argument



1 hp8

2 from four defense counsel. I don't see any necessity for  
3 everybody else to stay around. If you want to, of course,  
4 you are welcome to. Otherwise, I don't see any necessity  
5 for it.

6 MRS. ROSNER: Your Honor, I have two motions  
7 addressed to the indictment and I have one which is  
8 addressed to a substantive count which I would like to be  
9 heard on.

10 THE COURT: These are other than the usual  
11 motions?

12 MRS. ROSNER: Yes, other than the ordinary Rule  
13 29 motion.

14 THE COURT: All right, I will hear you.

15 MR. ROSENBERG: Your Honor, I still have a Wade  
16 hearing.

17 THE COURT: I know.

18 MR. ROSENBERG: Can I have the afternoon off?

19 THE COURT: You were the one who was begging me  
20 most.

21 MR. ROSENBERG: I know.

22 THE COURT: All right.  
23  
24  
25

MR. PHILLIPS: Your Honor, if Mr. Rosen-

berg is entitled to a Wade hearing it seems to me this

afternoon is the best time to have it.

THE COURT: Do you have the agent here?

This is the guy coming up from New Orleans.

MR. PHILLIPS: Your Honor, the agent was

checking over the weekend to ascertain because it was his

impression that Mr. Dawson was not shown any photographs

of Mr. Pugliese in Washington. He was to get back to

me when he had the answer.

I told him if he was we wanted those agents

here this morning or first thing this afternoon. I

have been in court and I haven't had a chance to find

out what the final outcome is.

THE COURT: I assume you are going back to

your office.

MR. ROSENBERG: No. I don't mind doing

it tomorrow, Judge.

THE COURT: All right.

MR. ROSENBERG: I would like to say this,

Judge: Mr. Dawson indicated that there were four or

five people that showed the pictures. I want each one

that he alleged showed the pictures in court.

THE COURT: I hear you.



2 MR. ROSENBERG: Thank you, sir.

3 THE COURT: You still get the afternoon  
4 off.

5 MR. ROSENBERG: I appreciate it.

6 THE COURT: Yes, Mr. Dowd.

7 MR. DOWD: I missed the first announcement  
8 this morning, Judge. You want to hear from four  
9 lawyers?

10 THE COURT: That's right.

11 MR. DOWD: You don't want to hear from anybody  
12 else?

13 THE COURT: I assume that you all make the  
14 motions, and I am assuming, and I want the Court of  
15 Appeals to assume, not only are you making the motions,  
16 but you are making them brilliantly.

17 MR. DOWD: Every conceivable argument that  
18 could be made, that later could be argued --

19 THE COURT: Listen, right now you are ahead  
20 of the game.

21 MR. DOWD: All right.

22 MR. POLLAK: Judge, I think my client is in  
23 an unusual position as far as the defendants are con-  
24 cerned and I would like to make an individual motion on  
25 his behalf, as well as join in the motion made by the --

1                   jha  
2                   THE COURT:     Other brilliant gentlemen.

3                   MRS. ROSNER:     Your Honor, if you would in-  
4                   dulge me, I would like not to come back this afternoon.

5                   THE COURT:     I will hear you right now.

6                   MRS. ROSNER:     There are two separate arguments,  
7                   your Honor.    The first is that the conspiracy count fails  
8                   because it is duplicitous.

9                   The count charges -- there is a smile on your  
10                  face, Judge, that is untowards so early in the argument.

11                  THE COURT:     When you go back to your  
12                  office look up "duplicitous."

13                  MRS. ROSNER:     If I understand the law, your  
14                  Honor, duplicitous means that more than one crime is  
15                  charged in a single count, and the ground of the motion  
16                  is, your Honor, that the count, the conspiracy count of  
17                  this indictment, charges a conspiracy under the old law  
18                  that is Title 21, 173, 174, and the new law, Sections  
19                  840 and forward.

20                  I think, your Honor, that the conspiracy is  
21                  defined by the statute.     It does not exist without a  
22                  statute under which it is charged.     I think the govern-  
23                  ment had two appropriate alternatives in this case,  
24                  neither one of which was followed.     They could  
25                  have charged two conspiracy counts, one encompassing the



jha

time of the old law and one encompassing the time of the New law, or they could have charged a 371 conspiracy, the objective of which was to violate each of the other narcotics states, the old law and the new law, the difference, of course, being that the penalty provisions under 371 are far less stringent than under either of the narcotics laws, but I think in the form charged the count violates, I think it is, Rule 7 of the Federal Rules of Criminal Procedure in that it is duplicitous.

In addition, your Honor, I think an argument under United States against Kotteakos can successfully be urged in this case. I think the government really proved two conspiracies and attempted to tie them together by evidence that the ultimate source of all the narcotics was one Vincent Papa. However, the only evidence that they offered to support that claim was hearsay, and I would submit that under United States v. Geaney, just as they must provide nonhearsay evidence of an individual conspirator's participation in a conspiracy, so too when they attempt to show a common source, to tie together what would otherwise be two separate and distinct conspiracies, they must do so by some quantum, that is, a fair preponderance of nonhearsay evidence.

The only thing there is in this record to tie

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2 together -- I don't want to characterize it, but there  
3 is evidence relating to Mr. Inglese and people whom he  
4 allegedly dealt with which is completely unrelated to other  
5 defendants in this case. The only way that the govern-  
6 ment has attempted to tie all of that evidence together  
7 was by declarations from the witness.

8 MR. BARNABA: Which were no more than hear-  
9 say recitals that he had heard that Vincent Papa was  
10 ultimately the source of the narcotics allegedly distributed  
11 by Mr. Inglese and by other defendants here on trial.

12 I submit, your Honor, under Geaney that that  
13 is not enough. They must provide nonhearsay evidence  
14 of that fact or the conspiracy fails under United States  
15 against Kotteakos., and I would ask your Honor to so  
16 instruct the jury.

17 Now, there is also a count in the indictment  
18 charging Mr. Inglese with aiding and abetting a distribu-  
19 tion of narcotics by Frank Stasi at the Log Cabin when he  
20 received a certain quantity of cocaine from Jack Spada.

21 THE COURT: Which count?

22 MRS. ROSNER: I think it is count 23. I  
23 am not certain, your Honor. I don't have it in front  
24 of me.

25 THE COURT: All right.



1 jha  
2 MRS. ROSNER: The point is, your Honor, on  
3 cross examination Mr. Stasi indicated -- and I can supply  
4 your Honor with the reference in the morning or this after-  
5 noon, if you like -- that Mr. Inglese knew nothing about  
6 that transaction beforehand, that it was merely a  
7 fortuitous circumstance that he was present in the Log  
8 Cabin at the time that that transaction took place.  
9 He had absolutely no interest in it, no preknowledge of it,  
10 and there is nothing, your Honor, upon which to submit  
11 that count to the jury as to Mr. Inglese.

12 THE COURT: Are you finished, Mrs. Rosner?

13 MRS. ROSNER: Yes, your Honor.

14 I would like to supply your Honor with the  
15 number of the count and with the reference to Stasi's  
16 cross examination where he said that. If I may do that  
17 tomorrow, your Honor, that would be the only thing I  
18 have.

19 THE COURT: Those of you who wish to, have  
20 a pleasant afternoon. The four gentlemen I mentioned  
21 this morning be back here at 2 o'clock. I beg of you,  
22 please be short.

23 (Luncheon recess.)  
24  
25

AFTERNOON SESSION---(2:00 p.m.)---

(In open court; jury not present.)

THE COURT: All right, Mr. Panzer.

MR. CURRAN: Your Honor, we do have a

couple of details having to do with exhibits. We are

in the process of trying to find the cart. I thought

it would be here.

I could say that I know we have an exhibit,

your Honor, because I saw it before the break, which was

a piece of yellow paper which is a duplicate of Exhibit

59, the blackboard, and we wanted to offer the smaller

diagram in place of Exhibit 59, the blackboard. That

is a description of the Tear Drops Bon-Soir.

THE COURT: I don't know if it is the same

blackboard. Is that the one sitting outside the corri-

dor which says, "Judge Crater is sitting today"?

MR. CURRAN: 3503, your Honor? It is a

different blackboard. The blackboard is here, your

Honor. It is right against the wall here that the wit-

nesses testified about.

THE COURT: All right.

MR. CURRAN: In addition, your Honor, we

wish to offer in evidence Government's Exhibits 4, 5 and



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AFTERNOON SESSION

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---(2:00 p.m.)---

4

(In open court; jury not present.)

5

THE COURT: All right, Mr. Panzer.

6

MR. CURRAN: Your Honor, we do have a

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couple of details having to do with exhibits. We are  
8 in the process of trying to find the cart. I thought  
9 it would be here.

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THE COURT: I don't know if it is the same  
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different blackboard. The blackboard is here, your  
Honor. It is right against the wall here that the wit-  
nesses testified about.

THE COURT: All right.

MR. CURRAN: In addition, your Honor, we  
wish to offer in evidence Government's Exhibits 4, 5 and

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2 and I ask that it be marked as 59A for identification and  
3 I would offer it in evidence.

4 {Government's Exhibit No. 59A was marked for  
5 identification.

6 THE COURT: I think I will rule on all the  
7 evidentiary exhibit problems tomorrow morning when everybody  
8 is here, because I did give the afternoon off to those who  
9 were not involved.

10 MR. CURRAN: If that is the point, then,  
11 your Honor, I suppose we don't need to bring the  
12 mannite over at this time.

13 THE COURT: No. Just leave it there.

14 MR. CURRAN: It is 3, 4, 5 and 6 for iden-  
15 tification, your Honor. I misspoke.

16 THE COURT: That is all right.

17 All right, Mr. Panzer.

18 MR. PANZER: Your Honor, my motion is for a  
19 judgment of acquittal as a matter of law pursuant to Rule  
20 29, Federal Rules of Criminal Procedure.

21 As your Honor knows, Hattie Ware is just  
22 named in the first count of the indictment, the conspiracy  
23 count, and the conspiracy is alleged to have commenced on  
24 the 1st day of January, 1969 and ended some time in Decem-  
25 ber of 1973.



1  
2 There are 29 counts in the indictment. She  
3 is just mentioned in one. In order to be brief, I  
4 will refer to the one overt act that she is named in,  
5 and that is No. 12.

6 I would like to refer specifically to testi-  
7 mony of Mr. Provitera on that overt act. I believe tha  
8 is on page 2978 of the trial transcript. I wish to  
9 start on line 16:

10 "Q Thereafter, Mr. Provitera, did you have occasion  
11 to return once again to University Avenue?

12 "A Yes, I did.

13 "Q Do you recall what month that was?

14 "A It was either late February or early March.

15 "Q Did Harry call you?

16 "A Yes.

17 "Q What did he say to you?

18 "A He told me that I would find a package again und  
19 my front seat of my car and to take it to Hattie Ware's  
20 apartment, where I would meet Patty.

21 "Q And this is Patty --

22 "A Dilacio.

23 "Q Did you thereafter go to Hattie Ware's apart-  
24 ment?

25 "A Yes.

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"Q And who was there, if I recall?

"A No one, just Hattie. I asked if Patty was there yet and she said no. We waited for Patty to arrive.

"Q Did he come?

"A Yes.

"Q And what happened then?

"A He asked me if I had the package. I said that I did. I gave it to him and he asked Hattie if she would do him a favor and take it to Al Greene's apartment. He said he didn't feel like going down.

"She said she would and Patty gave her the package and he handed her some money and she went down, she left, left me and Patty there.

"Q Did she come back?

"A Yes.

"Q Was there any conversation at that point?

"A Patty asked her if she -- everything went okay, if she gave it to Al. She said yes. And then we left."

That is the government's proof on that particular overt act, I think, and what I want to point out to your Honor is, No. 1, there is no mention that Hattie Ware ever knew there were drugs in that package, there is



no mention at any time Mr. Provitera saw drugs in that package. From that I believe the government is trying to infer that she was a member of the conspiracy with respect to that overt act and I think that the evidence is not sufficient on that ground alone.

There is some other evidence in the case, of course, your Honor is aware of. There is evidence of several meetings at Hattie Ware's apartment, I think one in 1970 and one in 1972. But interesting enough during those meetings, although the witnesses, I believe, Harry Pannirello and James Provitera, say Hattie Ware was present, they never say that she participated during discussions. In fact, both deliveries on those times occurred inside a bedroom. And when I asked one of the witnesses, Provitera, on cross examination with respect to that bedroom, he said that Hattie Ware was never, never in that bedroom.

There is some additional testimony by Pannirello about an alleged delivery at Hattie Ware's, but he's not quite sure of the day or the date. I don't think that is sufficient to put her in the conspiracy.

I would like to point this out to your Honor.

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We have a unique problem here in that we are dealing with two laws, 173, 174, the old law, which I believe was changed, I think, May 31, 1971, and think we have new sections, Title 21, 812, 841 and 843.



1  
2 Under the old law, in order to make Hattie Ware  
3 a member of the conspiracy, they would have to show that  
4 she had actual knowledge of the illegal importation of drugs.  
5 They have not done that by any of their witnesses.  
6

7 If they want your Honor to draw the inference  
8 that because Mr. Provitera said that he handed her a package  
9 they want you to draw the inference that there was drugs  
10 in that, then they want you to draw the additional inference  
11 that because there was drugs in that Hattie Ware knew that  
12 the drugs were illegally imported into this country,  
13 clearly one of the primary rules of evidence as I learned  
14 it in law school was you can't have an inference on an  
15 inference, and I think this is one of the faults in the  
16 government's argument with respect to 173 and 174.

17 With respect to the new law, I again feel that  
18 they have not, but a preponderance of the evidence,  
19 shown this Court sufficient evidence to go to a jury.  
20 But I would like to submit this argument to your Honor:

21 We are on trial with 17 defendants, 18 lawyers.  
22 It is the government's option; they wanted it this way.  
23 As a result of this, approximately a million dollars has  
24 come into this case. There has been a great deal of  
25 argument about that. That is definitely going to affect  
Hattie Ware if the jury is going to deliberate on this

1 tp2

2 case.

3 I would ask your Honor, because of the nature  
4 and because of the fact it was the government that elected  
5 to indicate and prosecute all these people at the same  
6 time, that you adopt the test that was adopted by Judge  
7 Weinstein on one case and if my recollection is correct  
8 Judge Dimock at one point, and that is if you felt the  
9 government did not prove a particular defendant's guilt  
10 beyond a reasonable doubt, he would not let the case go to  
11 the jury. I ask your Honor to do it. I think your Honor  
12 has the discretion to do it solely on the basis that it is  
13 the government that has decided to prosecute 17 people at  
14 one time and that tremendous problem we have with the money.

15 Now, I am sure the government will concede that  
16 Hattie Ware doesn't have anything to do with that million  
17 dollars. But how I am going to be able to overcome that  
18 effect with the jury, I can't see it. I would ask you for  
19 those reasons to render a judgment of acquittal with respect  
20 to Hattie Ware.

21 Thank you.

22 THE COURT: I have spent the luncheon hour going  
23 through a summary of the transcript and I think on the  
24 basis of everything I have seen that the government has  
25 made out a case sufficient to go to the jury as against



1 tp3

2 Hattie Ware and, accordingly, I must deny your motion.

3 All right, Mr. Richman.

4 Mr. Richman, your problem, I gather, is slightly  
5 different.

6 MR. RICHMAN: Substantially different.

7 THE COURT: You weren't here when I tried to  
8 formulate it for you this morning, but go ahead.

9 MR. RICHMAN: I would be very happy to listen  
10 if your Honor would like to go ahead and pick up from  
11 there.

12 THE COURT: No. You do your own work.

13 MR. RICHMAN: Your Honor, essentially, Benjamin  
14 Tolopka was indicted and is mentioned in two counts of the  
15 indictment, the conspiracy count and count 7. Both instances  
16 cover the same overt act, to wit, an alleged transaction  
17 that occurred in August of 1970.

18 This entire case, at least with reference to  
19 Benjamin Tolopka, is governed by the old law in sentence  
20 as well as in application.

21 This case is governed by Section 174 of Title 21  
22 which says, "Whoever fraudulently or knowingly receives,  
23 conceals, buys, sells or in any manner facilitates the  
24 transportation, concealment or sale of any narcotic drug  
25 after being imported or brought in knowing the same to have

1 tp4

2 been imported or brought into the United States contrary  
3 to law, is guilty of a crime." That is essentially what  
4 the law is.

5 The elements of that law require an act per-  
6 taining to narcotics, that the heroin or cocaine had been  
7 imported unlawfully into the United States and that the  
8 defendant knew that this narcotic drug had been illegally  
9 imported into the United States. That is pursuant to  
10 Harris vs. U.S., 359 U.S. 19.

11 I maintain, your Honor, that the government has  
12 failed to show that the defendant Benjamin Tolopka knowingly  
13 had knowledge that this drug was imported into the United  
14 States.

15 Generally, an inference may be drawn that a drug  
16 has been imported and, frankly speaking, most of the cases  
17 indicate that this inference may reasonably be drawn in  
18 cases of heroin.

19 In cases of cocaine, Turner vs. The United States  
20 struck down that presumption in amounts such as are involved  
21 in this particular case.

22 The Turner case, your Honor, which was reported  
23 in 396 U.S. 398, and I am sure your Honor has read it  
24 pertaining to this particular matter, the presumption under  
25 Section 174 will not support -- I am quoting from the case



tp5

itself -- petitioner's conviction with respect to the possession of cocaine as the facts show much more cocaine is lawfully produced in than smuggled into this country and the amount of cocaine stolen from legal sources is sufficiently large to negate the inference that the petitioner's cocaine came from abroad or that he must have known that it did.

In this particular case, your Honor, the government has even failed to introduce one iota of evidence, one grain or gram of evidence to the effect that this narcotics was imported, and I think that is very important and I think that is the entire element in this case.

The Gonzales case, which is a Second Circuit case, your Honor, which is reported in 442 Fed. 2d 698, further establishes the basis and principle under which this importation concept and inference might be used. In that case they allowed an inference to be drawn, but the amount of the drug was a kilogram. But in both the Turner case and the Gonzales case there were seizures. In both instances they had the drug in their possession and they knew what were the contents of these packages and they knew how pure or unpure it was.

In this particular instance in this case with

1 tp6

2 Benjamin Tolopka, we don't have any seizure, we don't know.  
3 We have an allegation that the defendant had one-eighth of  
4 a ki. We don't know how much it was cut, we have no  
5 indication to find out whether there is only 10 grams or 2  
6 grams to make up that ki of pure cocaine. So any inference  
7 that may be drawn must be drawn in favor of the defendant.

8 There has been some post-Gonzales decision and  
9 the one in the Second Circuit, U.S. vs. Harding, 463 Fed.  
10 2d 923, the Court again stated -- this is just 1972 -- that  
11 no inference may be drawn in these old law cases that  
12 cocaine was imported. In the absence of large amounts or  
13 direct evidence that there was an importation, the con-  
14 victions could not stand.

15 I submit respectfully, your Honor, in this instance  
16 the government has failed to make out a prima facie case.  
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2 THE COURT: Mr. Richman, just let me ask you  
3 this. The inference is not available as to cocaine  
4 partially because of the manufacture in the United States  
5 of cocaine for medical purposes.

6 MR. RICHMAN: Correct.

7 THE COURT: That cocaine which is manufactured  
8 in the United States is always white. To the best of my  
9 knowledge, there is no brown cocaine manufactured in the  
10 United States.

11 The evidence here indicates that the cocaine,  
12 at least the second time was brown. Do you think that that  
13 makes a difference as to whether or not the inference may  
14 be drawn?

15 MR. RICHMAN: Your Honor, I am addressing myself  
16 primarily to the first instance in August of 1970, which  
17 involves itself with the overt act and the count 7 of the  
18 indictment. There is no reference to the second trans-  
19 action.

20 In this alleged second transaction -- if your  
21 Honor wishes me to refer to it, I will -- it has never  
22 been charged and without going into the truthfulness or  
23 convenience with which this second transaction occurred,  
24 not doubting the government's good intentions, the fact  
25 of the matter remains, your Honor, that the only testimony

1 hp2

2 as to the brown content of the cocaine was never in the  
3 possession of Benjamin Tolopka. At all times this was in  
4 the possession of the person Richard Forbrick and it was  
5 not received or accepted by Benjamin Tolopka on the  
6 testimony of John Barnaba and John Barnaba himself took  
7 it back.

8 So as to the introduction of that evidence as  
9 against Benjamin Tolopka, I don't think it's applicable at  
10 all.

11 THE COURT: All right.

12 MR. RICHMAN: Secondly -- one other point, your  
13 Honor -- I don't recall the testimony indicating that it  
14 was brown, although that seemed to have been an issue.  
15 The only thing that I do recall about that particular issue  
16 is the presence of mannite, which was questionable as to  
17 the occurrence. But that I will save for summation, if  
18 we get that far.

19 I submit, your Honor, that count 7 must definitely  
20 fail since the government has failed to establish the  
21 inference or the knowledge of the defendant Benjamin  
22 Tolopka.

23 THE COURT: As to the brown content, by the way,  
24 I think you will find it somewhere in the area of the trial  
25 transcript between 1300 and 1330.



1 hp3

2 All right. I am not going to rule on your  
3 motion right now. I am going to reserve.

4 MR. RICHMAN: May I address other references to  
5 other aspects of this motion, your Honor?

6 THE COURT: Sure.

7 MR. RICHMAN: That was the major issue. I believe  
8 on the law we have it pretty solid as to the counts and  
9 the conspiracy.

10 I also question quite strongly, your Honor,  
11 the allegation that Benjamin Tolopka was really part of  
12 this conspiracy. The alleged first transaction in this  
13 whole conspiracy is the Tolopka situation and that terminates,  
14 his participation in the conspiracy, before any other  
15 transactions occur. It's my contention, your Honor,  
16 that, frankly, Tolopka doesn't even belong in this case.

17 If your Honor finds contrary -- I mean contrary  
18 to our first argument -- pursuant to U.S. Vs. Cirillo,  
19 U.S. vs. Nuccio and U.S. vs. Dardi, which I have cited  
20 before and gave citations before on an earlier occasion,  
21 Tolopka's participation in this alleged conspiracy  
22 terminated before the conspiracy actually got started.

23 THE COURT: I understand. I am still going to  
24 reserve.

25 Mr. Curran, do you want to respond?

hp4

MR. CURRAN: Briefly, your Honor.

The proof as to Tolopka with respect to count 7 shows that he received a quarter of a kilogram of cocaine. There is additional evidence as part of the conspiracy where the proof shows that he had received an additional one-eighth of a kilogram of cocaine and that is the one-eighth of a kilogram which your Honor may recall he returned after having the dispute with the witness Barnaba over it. The dispute I believe took place at the animal or veterinary hospital with Mr. Forbrick also present.

With specific reference to the assertion by Mr. Richman that there is no presumption which can be relied upon here, the government would disagree. As I understand, your Honor, the rule in this circuit and the rule in the Gonzales case is that if there is over 1000 grams involved or a kilogram the presumption does apply, if there are under 10 grams it does not apply, and that in between it's a question of fact whereby the jury may decide. Here we are talking about, according to the government's proof, three-eighths of a kilogram of cocaine.

I would suggest there are two other additional factors, your Honor. No. 1, it's the government's intention to ask the Court, and we believe this is the procedure spelled out in Gonzales, to take judicial



1 hp5

2 notice of the figures about thefts of drugs compiled by  
3 the Bureau of Narcotics and Dangerous Drugs, now the  
4 Drug Enforcement Administration.

5 In addition, I would point out, your Honor,  
6 that there is testimony in the record that the defendant  
7 Tolopka was a police officer, and we submit that there is  
8 an additional basis there, not necessarily a conclusive  
9 basis, but certainly a basis whereby the jury may infer  
10 that he would have the kind of guilty knowledge in this  
11 issue where perhaps they would be less able to draw the  
12 same inference against another kind of defendant or  
13 certain other kinds of defendants, at least.

14 Your Honor, the point on the area, as I under-  
15 stand it, between the 10 grams and the 1000 is the Court  
16 charges the jury as to the presumption and, in addition,  
17 gives them the facts, which have been judicially noted,  
18 supplied by the Bureau of Narcotics and Dangerous Drugs  
19 or the Drug Enforcement Administration, and on the facts  
20 of this case we are talking, as I said, of three-eighths of  
21 a kilogram, at least for the purposes of connection of  
22 this defendant to the conspiracy, by independent evidence  
23 of his own acts and declarations, and there is going to be,  
24 according to the government's position, at least, ad-  
25 ditional evidence which can be considered by the jury

1 ap6

2 against him. We will supply the Court, of course, with the  
3 figures.

2 4 MR. RICHMAN: May I respond to that, your  
5 Honor?

6 THE COURT: Yes.

7 MR. RICHMAN: As I indicated earlier, both  
8 those cases have a seizure where we can tell how many grains  
9 of cocaine were present. Between 10 and 1000, as Mr.  
10 Curran has indicated, is the standard.

11 However, I think Mr. Curran will readily admit  
12 that 10 grains can be cut, even less than 10 grains can be  
13 cut down to a quarter of a ki and still be sold in the  
14 regular marketplace.

15 And we don't have a seizure here. So how do we  
16 know how many grains? It could be we had four grains  
17 present. Can we draw that inference nevertheless?

18 I suggest without seizure, your Honor, the  
19 government has failed in their case.

20 THE COURT: All right. Mr. Ellis.

21 MR. ELLIS: May it please the Court, I would  
22 not be one to suggest that your Honor or any other judge  
23 in this court would approach a motion of this kind with  
24 anything less than the utmost sincerity and diligence.  
25 Nevertheless, in my judgment it would be appropriate to



1 hp7

2 remind the Court at the outset of the admonition of the  
3 Court of Appeals of this circuit in United States vs.  
4 Buffalino, 285 F. 2d 408, at page 417, in what I regard  
5 as a moment of rare realism in a case of this kind,  
6 when they pointed out that our courts have long indulged  
7 in a naive supposition that the jurors in a mass conspiracy  
8 case really can keep the evidence straight with respect to  
9 each of the defendants on trial, even when they are aided  
10 by competent and accurate marshalling of the evidence,  
11 and thereafter determine individual guilt or innocence.

12 In making that observation the Court of Appeals  
13 was focusing on the importance of the trial court in  
14 determining the sufficiency of the evidence before allowing  
15 a case to go to the jury.

16 Your Honor, my point is here that when you go  
17 through the evidence in this record the substantiality  
18 required to enable this jury to find that Angelo Mamone  
19 consciously entered upon this conspiracy and adopted its  
20 ends for himself and had a stake in its outcome just is not  
21 present.

22 Admittedly the government has shown that he has  
23 associated with certain of the defendants and co-conspirators  
24 on certain occasions. But that evidence of association  
25 has to be regarded against the backdrop of what is not in

1 hp8

2 this record and what is not in this record is that on a  
3 single occasion Mamone ever bought narcotics, ever sold  
4 narcotics, ever cut narcotics, ever imported narcotics,  
5 ever financed narcotics, ever transported narcotics, ever  
6 stashed narcotics, or ever did any of the things that one  
7 does in furthering a narcotics conspiracy.

8 There isn't a single instance in this record,  
9 your Honor, that has Mamone present during a narcotics  
10 transaction or even has him present during the discussion  
11 of a narcotics transaction, and in a very few moments I  
12 could summarize all of the evidence in this case with  
13 respect to this defendant. That evidence comes from two  
14 witnesses.

15 The first, Frank Stasi, said that Mamone was  
16 present from two to three times a week, or maybe it was  
17 four times a week -- my recollection escapes me at this  
18 moment -- at the Beach Rose Social Club.

19 THE COURT: He said three to four times.  
20 It's on page 381. He also said he never overheard anything  
21 between Mamone and Gigi.

22 MR. ELLIS: Yes. I was about to come to that,  
23 your Honor.

24 Since your Honor alluded to the conversations  
25 between Inglesse and Mamone, he said that on occasion he



1 hp9

2 saw Inglese speaking with Mamone and on at least one  
3 occasion he, Stasi, was sent by Inglese to fetch Mamone  
4 from Mamone's home and ask him to come down to the club.  
5 Stasi never testified that he overheard what any of  
6 these conversations were about nor did he assert that he  
7 knew the reason why Inglese sent for Mamone.

8           There is nothing in this record that would  
9 enable this jury to find that any of those associations  
10 or conversations were in any manner related to narcotics,  
11 and yet your Honor should bear in mind Stasi's testimony  
12 of the nature of this club. He testified that it was a  
13 room roughly half the size of this courtroom, at least half  
14 the depth of this courtroom, that it was frequented by all  
15 kinds of neighborhood people, that it was essentially a  
16 place where persons went to play cards and otherwise gamble  
17 and have some coffee or some drinks, and he said that when  
18 Mamone was there he was always there to play cards or  
19 gamble and there was no suggestion by Stasi that he was  
20 there for any other purpose.

21           The other witness against Mamone, of course,  
22 is John Barnaba. I admit that John Barnaba's testimony  
23 creates a little bit more of a problem for Mamone than  
24 Stasi's did, but I most respectfully submit that it too  
25 fails to rise to the level of substantiality necessary to

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2        entitle this case to go to the jury.

3                The first transaction that Barnaba testified to  
4        was the so-called counting of money in October or November  
5        of 1970, and as I recall, your Honor, Barnaba testified  
6        that on the evening inquestion he, Barnaba, brought a bag  
7        of money to the BeachRose Social Club.        Inglese and  
8        Mamone were at the bar. Barnaba threw the money on to the  
9        bar in the bag and Gigi started to count it.

10               He said, "Butch, come on over here," in substance,  
11        "Come on over here and give me a hand counting this money,"  
12        whereupon Barnaba said, "It's my money, let me count it,"  
13        or "I should be the one to count it."



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At no time during that transaction was there a single mention of narcotics for a single fact upon which this jury could base the inference that that money was the proceeds of a narcotics transaction.

Barnaba testified that on one occasion he heard Pat Dilacio say that Mamone was Joe DiNapoli's partner in everything, I suppose suggesting that that included narcotics. Your Honor, I respectfully suggest that not only does that statement entirely lack probative value, it has no place in this record. It is narrative hearsay. There is no indication in the record that it was uttered in furtherance of a conspiracy. It cannot, in my judgment, formulate the basis for the inference that Mamone was in any way connected with DiNapoli. If that association existed there was ample opportunity for the government to prove it by legal evidence.

The Burke incident, the incident when Mamone supposedly interceded to call off the dogs that were about to slay Barnaba, I remind your Honor that Barnaba testified that he first encountered this difficulty with Mr. Burke, a gentleman from Pittsburgh, in May or possibly June of 1971. Thereafter on several occasions he went to the Beach Rose Social Club, according to his

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2 testimony, and attempted to get Inglese to do something  
3 about Mr. Burke.

4 On my cross examination of Barnaba I asked him  
5 what he said to Inglese and on the earlier occasions he  
6 went through the whole story with Inglese, how there was  
7 this dispute over the quality of the narcotics sold to  
8 Burke and how Burke came around to the used car lot and  
9 to Barnaba's home and threatened Barnaba's life, but when  
10 you get down to August, on or about August 20th, when  
11 Mamone supposedly first hears of this incident, Barnaba  
12 is no longer going through this whole story, he is not  
13 repeating all of this. Inglese knows it. He is  
14 simply saying, "That guy is still after me."

15 He was very clear in his testimony. It was  
16 totally unambiguous. Mamone overheard that somebody  
17 was after Barnaba and he said, "Let me help."

18 There is no evidence in this record, your Honor,  
19 to entitle this jury to draw the inference that Mamone  
20 knew that that controversy had its antecedents in a  
21 dispute over narcotics or that in attempting to save  
22 this man's life, if, indeed, he did that, he was joining  
23 a narcotics conspiracy.

24 Your Honor, that defies credulity, to say that  
25 a man attempting to save another man's life and the



1  
2 life of his family, without any discussion of narcotics  
3 at all, can somehow be pinned into a narcotics conspiracy  
4 of this kind.

5 The final incident testified to by Barnaba with  
6 respect to Mamone was the so-called vouching for Forbrick.  
7 Barnaba testified that Forbrick expressed a desire to  
8 Barnaba to see Inglese. Barnaba supposedly carried this  
9 message to Inglese at the Beach Rose Social Club and  
10 said that "It might be a good thing if you would see Mr.  
11 Forbrick in case something happens to me," or words to  
12 that effect. That effect.

13 Mamone supposedly chimed in, when Inglese  
14 exhibited some reluctance to see Forbrick, "It's okay, my  
15 wife knows his wife, knows him for years," whatever it  
16 is. On cross examination Barnaba admitted that  
17 Mamone does not know Forbrick and Forbrick does not know  
18 Mamone.

19 Your Honor, I respectfully submit that in  
20 the absence of either Mamone knowing Forbrick or For-  
21 brick knowing Mamone you can't submit this case to the  
22 jury on that kind of illusory evidence. It is just  
23 an invitation to find guilt by association and indulge  
24 in exactly the kind of dragnet operation that the appel-  
25 late courts have repeatedly warned against as a danger

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inherent in this kind of conspiracy prosecution.

I would most respectfully ask your Honor to enter judgment of acquittal in the absence of any evidence at all linking Mamone to narcotics.

Thank you.

THE COURT: Mr. Ellis, I intend to reserve on yours also.

MR. ELLIS: Thank you.

THE COURT: You want to be heard, Mr. Curran?

MR. CURRAN: Your Honor, just very briefly.

I think that Mr. Ellis has recited at least the major instance involved in which the defendant Mamone is connected by his own acts and declarations to the conspiracy charged in the indictment. I would just make a couple of points beyond the facts recited by Mr. Ellis.

No. 1, Government's Exhibit 17 in evidence shows the defendant Mamone and the defendant DiNapoli about as close together in a picture standing still in front of the Beach Rose as one could be without touching each other, and I think Mr. Ellis said in his statement that there was no evidence at all of any association between the two defendants. In any event, that picture puts them together physically right in front of the Beach Rose and it is in evidence.



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2 No. 2, your Honor, my recollection of the  
3 testimony is -- I think it appears at pages 1427 and 1428  
4 of the record -- that when the defendant Mamone was  
5 talking with the witness Barnaba about the Burke problem  
6 the defendant Mamone told Barnaba that Burke was a  
7 customer of his, Mamone's, and that he, Burke, owed Mamone  
8 \$25,000 to \$30,000, and I submit, your Honor, given the  
9 context of that statement, and given what went on before  
10 by way of Mamone's counting money, and the other items of  
11 evidence to which Mr. Ellis has referred, that that con-  
12 stitutes more than enough evidence to connect Mamone with  
13 a conspiracy to violate the narcotics laws, and more  
14 specifically, to connect him without any question to this  
15 conspiracy.

16 MR. ELLIS: Your Honor, in reply I would only  
17 like to say that the so-called incidents of counting  
18 money and Barnaba, which occurred almost a year apart, even  
19 if you credit Barnaba's testimony that Mamone said that  
20 Burke was his customer, there is nothing in this record  
21 to indicate what he was a customer for, there is  
22 nothing in this record to establish that the relationship  
23 between Burke and Mamone was between a buyer and a seller  
24 or dealer of narcotics. It just doesn't exist in  
25 this record.

THE COURT: All right. Mr. Siegal.

MR. SIEGAL: May it please the court, first I would like to move to strike from the record all of the testimony that was taken subject to connection.

I now most respectfully move for judgment of acquittal on behalf of Mr. Tramunti with respect to count 27, which is the substantive count.

In that case, may it please the court, I find not one word of testimony in this record that Tramunti possessed, constructively or otherwise, any heroin at any time, much less in May of 1973.

The government witness Frank Stasi has testified that the last time he cut heroin was in 1972, prior to the date that the defendant Tramunti allegedly joined the conspiracy.

Now, what have we got with respect to the conspiracy count. All that we have is half a conversation-supposedly. Stasi says that one occasion in the beginning of February 1st 1973, although the bill of particulars says January 14th or 15th, he was on his way to the toilet when he overheard a conversation wherein Inglese is supposed to have said, "I expect some goods, I'll need some money."

There was no response by Mr. Tramunti, although



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2 Mr. Stasi said in answer to a question by the prosecutor  
3 that Mr. Tramunti nodded and used his hands. Well,  
4 what does that mean? Which way did he nod, how did  
5 he nod, and how did he use his hands?

6 Certainly that testimony is not unequivocal.  
7 At best it is equivocal, and in the language of Judge  
8 Learned Hand, who has passed on this subject so many times  
9 in U. S. v. Reina, in the Aviles case and other cases,  
10 it has always been said that before you can put a man into  
11 a conspiracy you have to look at the words coming out  
12 of his mouth and they must be unequivocal. If they are  
13 are equivocal they cannot be used. And you cannot  
14 also use any hearsay statements before you first put him  
15 into the case.

16 Now, we have a situation here where the  
17 entire case revolves about this conversation, this half-  
18 way conversation. Nowheres during the entire alleged  
19 conspiracy is Tramunti alleged to have had possession,  
20 shown to have had possession, constructively or  
21 actively or any other way, that he bought or sold or  
22 anywheres was near any mixing of heroin.

23 We haven't even got what they said they were  
24 going to prove, and that was that he put up some money.  
25 I say most respectfully to your Honor that there is





not one word of testimony in this case that he put up, not a quarter, but a nickel. He never put up a nickel in this case.

If Inglese had said to him, as Stasi said after many, many times before that all Inglese said was "We expect something," but we will take his word now that he said "goods," and he said, "I might, I would need some money," the fact nevertheless is that Inglese withdrew that so-called offer or request for money and said, "No," if we are to believe Stasi.

Nowheres anywheres in this case did Tramunti do anything by which a jury could infer that he actively knew that Inglese was a part of a larger conspiracy or a general conspiracy and that Tramunti agreed, accepted, joined, made the conspiracy his own, took a stake in the conspiracy. There is nothing here in line with all of the cases that can be cited, and we have cited them in our requests, that shows that Tramunti had anything to do with this alleged conspiracy outside of that one conversation.

They have some hearsay conversation which they cannot use, but I am going to allude to it for a moment.

One is that in the minutes of this trial Stasi says to Tramunti at the Bon-Soir, "I am going to visit Inglese," and Tramunti says, "I miss the big guy.

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If you see him ask him about some money he asked me  
about."

From then on whatever Stasi did with Inglese,  
if he visited him at the jail or not, is all hearsay  
outside of the presence of Tramunti. But neverthe-  
less, according to Stasi, when he comes back he says,  
"No."

So if there was any request for money there cer-  
tainly wasn't any deliverance of money, because the  
request was withdrawn.



The next reference to Tramunti is a so-called conversation wherein I think it was Inglese or Lentini or someone -- I think it was Inglese talking to Stasi again, they are talking about getting a bail bond for Lentini.

THE COURT: Hold on. That is the conversation that allegedly occurred between Inglese and Tramunti. Is that what it is?

MR. SIEGAL: -- No. It is a conversation between Inglese and Stasi supposedly in the presence of Tramunti, wherein they are talking about getting bail for Lentini and they ask Tramunti if he would do something about it and he says no.

Again, this financier of this enterprise does not come up with a quarter, neither to Inglese for the purpose of narcotics, neither for the purpose of bailing out Lentini.

-- If we allude to the decisions and we look for the words out of Tramunti, we find nothing that is unequivocal. At best all you have is a half a conversation and if that half a conversation were delivered to the jury all they could do is toss a coin at best to see which way they would go, and I most respectfully submit, if your Honor please, that under all of

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2 the cases, U. S. v. Aviles, 274 F. 2d and U. S. v. Reina  
3 at 242 F 2d and U. S. v. Puco, under all of the cases,  
4 Stromberg case, all of them -- Stromberg at 268 F. 2d 256 --  
5 you cannot bring in somebody into this conspiracy unless  
6 something was said by him that demonstrated unequivocally  
7 that he was going to join this criminal partnership, he  
8 was going to make the venture his own and he had a stake  
9 in it, and I submit most respectfully that this record is  
10 completely deficient on that score and I most respectfully  
11 urge your Honor to grant judgment of acquittal for Mr.  
12 Tramunti.

13 THE COURT: Do you want to reply, Mr. Cur-  
14 ran?

15 MR. CURRAN: Yes, your Honor.

16 The evidence consists of the testimony of Mr.  
17 Stasi and as I recall the stestimony from the notes that  
18 I have, your Honor, Tramunti and the defendant Inglese  
19 were in a conversation at Lo Piccolo and Stasi, passing  
20 by, overheard Inglese say to the defendant Tramunti, "I  
21 need some goods, I'm going to need some money."

22 Tramunti then nodded his head, according to  
23 the testimony.

24 That by itself, Mr. Siegal has put great  
25 stress on leaving that in isolation, and perhaps if it



1  
2 were in isolation it would deserve the great stress that  
3 r. Siegal has put on it. But it is not in isolation,  
4 your Honor, because then we have to look what happened  
5 thereafter.

6 We know from the testimony what "goods" means  
7 and what "goods" meant.

8 The next day Inglese told Stasi, "I expected  
9 some goods and I didn't get it," and there is testimony  
10 that "goods" means narcotics.

11 After this, your Honor, there is conversa-  
12 tion between the defendant Tramunti and Stasi at the  
13 Tear Drops Bon-Soir and Stasi says the defendant Tramunti  
14 says in substance that he misses the defendant Inglese;  
15 Stasi says he is going to see him, and he goes to see  
16 Inglese in jail, and on the next day he goes back and  
17 sees the defendant Tramunti and he tells Tramunti that Gig  
18 said no. And then Tramunti says, according to the  
19 testimony, "All right, I guess nothing is happening."

20 The testimony about the conversation between  
21 Inglese and Stasi in jail I think clearly relates to  
22 narcotics, any reasonable inference would certainly go that  
23 way, and clearly for the testimony at this stage of the  
24 trial there is no other inference which could be fairly  
25 drawn.

2 I differ with Mr. Siegal on his recollection  
3 of the conversation that occurred later with respect  
4 to Stasi, Tramunti and Inglese and the Lentini bail  
5 situation, because according to my recollection and  
6 my notes it was a conversation which Stasi heard Inglese  
7 tell Tramunti, "We're having a problem getting Moe Lentini  
8 out of prison." Tramunti says, "Well, get him out.  
9 What is the bail?"

10 Inglese replied, "It's \$75,000."

11 Tramunti said, "You mean to tell me you  
12 can't get up \$75,000? Well, try to get him out."

13 Tramunti, according to the proof and the  
14 evidence as we set it, your Honor, was present at that  
15 conversation and, of course, that conversation relates  
16 to getting out of jail a co-defendant, indeed, one who  
17 I believe has pleaded guilty and, of course, a co-con-  
18 spirator.

19 We submit, your Honor, that on that evidence  
20 there is clearly enough evidence to submit to the jury  
21 the question as to whether the defendant Tramunti was the  
22 financier of a substantial part of the narcotic con-  
23 spiracy charged in this indictment.

24 MR. SIEGAL: May I just --

25 THE COURT: Don't go away. Talk to me



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2 about count 27.

3 MR. CURRAN: Your Honor, the government  
4 consents to the withdrawal of that count from the jury.  
5 I am sorry, your Honor. I meant to do that first.

6 THE COURT: All right.

7 All right, Mr. Siegal.

8 MR. SIEGAL: I just wanted to say to your  
9 Honor that with respect to that Lentini conversation,  
10 Tramunti said, "There is nothing I can do about it."

11 THE COURT: All right. I am going to re-  
12 serve on this one also. I want to reread those sections  
13 of the record that refer to that particular conversa-  
14 tion.

15 MR. SIEGAL: May I hand up a memorandum which  
16 I have.

17 THE COURT: Absolutely. Sure. I appre-  
18 ciate any help I can get.

19 All right, gentlemen.

20 MR. RICHMAN: Your Honor, if I may just for  
21 a moment, I just discussed with my client and my client  
22 asked me to make a further point on just the issue of  
23 this second alleged transaction.

24 I would only ask your Honor to read the record  
25 thoroughly on that particular issue.

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2 THE COURT: I sure will.

3 MR. RICHMAN: It is 1320 to 1330.

4 THE COURT: That is what I have this book  
5 for. I have it divided by each defendant and the com-  
6 plete citation is the words in the record.

7 Mr. Pollak, I knew you wanted to be heard in  
8 connection with something else.

9 MR. POLLAK: Yes.

10 First of all, your Honor, I would like to  
11 be heard in connection with the Wade hearing that was  
12 conducted on the identification of my client Salley  
13 by Provitera.

14 I would respectfully move on the basis of the  
15 recent decision by the Court of Appeals in U. S. vs.  
16 Evans, I imagine it must be in the advanced sheets by  
17 now, but I simply have a photostatic copy here, which  
18 was decided September 19, 1973, Docket No. 73-1029, and  
19 it summarizes the older cases, such as the Simmons case  
20 and many others.  
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2                   I would submit on the Wade hearing the identi-  
3           fication that was made of the photograph was clearly  
4           tainted. The one photograph of Salley, the witness  
5           admitted it was more than twice, but I think any clear  
6           examination will show that Exhibit 2 on that hearing was  
7           about four, perhaps more times, the size of all the others  
8           and it stood out like a sore thumb from among the 19  
9           photographs that were shown the witness. In fact, the  
10          government made a point of saying, "Well, we are being very  
11          fair, we showed him 20 photographs, all we had to do was  
12          to show him five."

13                   I submit if they showed him a hundred photograph  
14          all of the small mug shot variety, and the one large  
15          photograph of Henry Salley, I submit that photographic  
16          identification so taints the in-court identification that  
17          the court identification itself should be suppressed.

18                   If the Court grants this motion, of course, then  
19          there will be no identification whatsoever of the defendant  
20          Henry Salley and then I would not have to go any further.  
21          However, since I don't know what the Court's decision on  
22          that motion is going to be, I will address myself to the  
23          motion that would ordinarily be made and which I now make  
24          at the end of the government's case, and that is for a  
25          judgment of acquittal based upon the failure of the

1 tp2

2 government to establish a prima facie case under the existing  
3 law against the defendant Henry Salley.

4 -- In connection with this, Salley is named only  
5 in the first count, the conspiracy count. There is no  
6 substantive count against him whatsoever.

7 The evidence against him can be summarized even  
8 quicker than some of the other counsel have summarized the  
9 evidence.

10 Two witnesses testified about any involvement  
11 by Salley. One of them, Pannirello, who was the one who  
12 could not identify him in court, said that on one occasion  
13 Salley was up with Allen, Warren Robinson, and that on that  
14 occasion there was a conversation about the sale of nar-  
15 cotics but no actual narcotics passed hands.

16 The witness Provitera had him present on three  
17 occasions and so that is the strongest evidence that the  
18 government has against Salley.

19 Briefly, those three occasions, and I pinpointed  
20 them, I drew the Court's attention -- I don't have the  
21 exact page numbers -- it is the cross-examination I had  
22 of Provitera which kind of pinpointed a rather meandering  
23 description of the three occasions. On direct examination  
24 I think he said there were three occasions.

25 The first he said there was delivery of



1 tp3

2 narcotics made to Allen. Salley was present at that time  
3 and was introduced to Provitera by Allen. Salley didn't  
4 handle any money, Salley handled no narcotics.

5 The second time Provitera says Salley came up  
6 to the Howard Johnson's alone and Provitera handed him a  
7 package of narcotics.

8 The third occasion was the occasion which is  
9 apparently the same occasion that Pannirello testifies to  
10 as the only occasion was the one when they were in the  
11 restaurant and, by the way, neither Pannirello or Proviter  
12 say there was any narcotics discussion with Salley in the  
13 restaurant, but that afterwards when they were ready to  
14 leave they saw Allen come up in the taxi-cab and they went  
15 back into the motel room and while there is some differenc  
16 in their testimony they substantially agree that there was  
17 some discussion, some money was paid by Allen, but no  
18 narcotics passed hands.

19 Again, on that third occasion all the dealings  
20 were with Allen and Salley was only present.

21 Now, I submit, your Honor, that in this case  
22 there is only one single instance in which of the three  
23 Salley was in any way involved in narcotics. On the other  
24 two he was simply present.

25 There are a number of cases on aiding and

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2 abetting which say that in order to be an aider or abetter  
3 you have to do more than just be there. I have a number  
4 of citations. Unfortunately, time pressure has made it  
5 impossible for me to prepare a brief as did Mr. Siegal,  
6 but I have a page from a previous brief which cites U.S.  
7 v. Kelton, 446 Fed. 2d 669; U.S. v. Irons, 475 Fed. 2d  
8 40; U.S. v. Samaniego, 43 Fed. 2 1244; King v. U.S.,  
9 402 F. 2d 289; U.S. v Sutton, 446 Fed. 2d 916, and U.S. v.  
10 Johnson, 462 F. 2d 608.

11 If the Court agrees to be an aider and abetter  
12 one has to do more than merely be present, and I note from  
13 the proposed charge to the jury that the Court is going to  
14 charge the jury something along those lines, then we are  
15 left with one instance in which Salley was there alone  
16 according to Provitera and at that time he received some  
17 drugs.

18 There is law in this circuit, and I am going to  
19 cite two cases, that a single act, and I think these cases  
20 are on all fours with this situation except that I think  
21 our situation is even stronger because in our situation  
22 Salley was definitely not the purchaser, apparently Salley  
23 was simply taking delivery for somebody, according to the  
24 testimony the way it went in, but the cases in this circuit,  
25 U.S. v. Aviles, 274 F. 2d 179 and U.S. v. Santore, 290 F.3d 51



1 tp5

2 these cases hold that where someone purchases drugs from a  
3 member of a widespread conspiracy and that is a single act,  
4 the purchaser does not thereby make himself a member of the  
5 conspiracy.

6 I submit on the strength of Aviles and Santore  
7 and on the facts as they came out on the government's case,  
8 this Court should and must dismiss the conspiracy count  
9 of the indictment as against Henry Salley.

10 I would like at this time, with the Court's  
11 permission, to hand up the two pages from the briefs giving  
12 the citations.

13 THE COURT: Yes.

14 Tell me, when you refer to the Santore case,  
15 which one of the three of them are you referring to?

16 MR. POLLAK: I have a citation here. I'm not  
17 quite sure now. It is 290 F. 2d, page 51. It is a 1967  
18 case.

19 THE COURT: Is that the en banc that ended up?  
20 I will take a look at it.

21 MR. RICHMAN: I am sorry, your Honor, not on  
22 this. I am finished on my section. I just want to touch  
23 on something before we leave.

24 I subpoenaed the records from the Police Depart-  
25 ment and we intend to go forward some time soon, I assume,

1 tp6

2 and I would require the records of the Police Department.  
3 Maybe the U.S. Attorney can help me get those records.

4 THE COURT: I don't know what is going on.  
5 You work it out with Mr. Curran.

6 That is it. All right, gentlemen, see you  
7 tomorrow morning at 10 o'clock.

8 MR. PHILLIPS: Your Honor, I have one request of  
9 the Court, and that is to inquire of Mr. Lopez the order in  
10 which the defendants are going to go in presenting their case  
11 and which defendants are putting in their defense.

12 THE COURT: You didn't hear me this morning, did  
13 you? The order of the indictment.

14 (Adjourned to February 26, 1974, at 10.00 a.m.)

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
George F. Reilly	3605	3626		
Peter Pallatroni	3649	3658		

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
98	3624	3625
99	3635	3636
100	3655	
100A through 100M	3655	

